

School of Media, Creative Arts and Social Inquiry

**ICT Policy Development in Indonesia: Contestation, Imbrication or
Collaboration?**

**A case study of the Law of Electronic Transaction and Information
(UU ITE) (2008 - 2016)**

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**This thesis is presented for the Degree of Master of Philosophy
Of
Curtin University**

February 2019

Declaration

To the best of my knowledge and belief this thesis contains no material previously published by any other person except where due acknowledgment has been made.

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university.

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Abstract

This thesis seeks to understand the process of ICT policy development in Indonesia post-enactment of the Law of Electronic Transaction and Information (ITE). It uses Indonesia's major ICT policy, ITE as a case study and works with three CSOs, *ICTWatch*, *Satudunia*, and *Medialink*. Giddens' theory of structuration acts as the theoretical framework for this thesis to analyse the role that the interactions, discussions and exchanges between the government (the Ministry of Communication and Information), three specific CSOs (*Medialink*, *ICTwatch* and *Satudunia*) and big business (*PT Telkom* and *PT Indosat*) play in the process of ICT Policy formation. In doing so the thesis will follow the trajectory from when the policy was enacted during President Yudhoyono's term and the issues that have led to its revision under President Widodo's administration.

ITE emerged in 2008 in response to fill the gap in ICT and Internet regulations and governance as the extant Law of Telecommunication (1999) was not equal to the task due to its narrow focus on infrastructure. However, ITE was poorly received by Indonesian people, calling into question the level of broader public priorities and participation in its formation and implementation.

This study found there are at least three important aspects to consider in working towards improvements in ICT policy formation process in Indonesia: To increase the involvement of multi-stakeholders within policy making process; the nature of policy making process itself which includes layers of governance and lines of authoritative bodies in Indonesian system of government; and the major challenges of Internet infrastructure, access and the level of digital media literacy among Indonesians.

Acknowledgement

All praise is due to Alloh SWT who gives us the very best guidance in life. I am really grateful because I am allowed to undertake my study in Perth, Australia.

I wish to express my gratitude to many people and institutions which have helped me to complete my study and this thesis. First of all, I would like to express my great appreciation to my principal supervisor, Prof Michele Willson, who has given me the confidence and kindness assistance to reach the final stage of my study. My deepest thankfulness also goes to Dr Susan Leong, my supervisor, who determinedly and vigorously assisted me in finding the diamond of knowledge. They have guided me in this research and provided much intellectual equipment and insights for the research.

I also would like to thank to Prof Matthew Allen, Dr Helen Merrick, Assoc. Prof Mike Kent, and Dr Denise Woods who also meticulously provided assistance, advice, and support in various aspects of my study.

I also acknowledge the valuable support from *Yayasan Satudunia*, *Medialink* and *ICTWatch*, who provided opportunities and time to discuss and share important information and materials regarding my research topic. I am sincerely grateful for their help.

My gratitude is also extended to DIKTI (the Directorate General of Higher Education) which have provided me a scholarship for my study. This research also has indebtedness to the School of MCASI, Curtin University, which have provided additional funding assistance in some parts of my research. I also would like to thank the Rector of Tirtayasa University and the Dean of Social and Political Science Faculty, who provided support for permission and document aid.

I also thank and acknowledge the help from Andy Kirker and Sophie Revington who kindly assisted me in editing this thesis and translating the interviews transcript. Finally, I could not have done this task without considerable support from my parents and families. I dedicated this research to them, especially to my mom.

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Abbreviations

ABRI	Indonesian National Army
AJI	the Alliance of Independent Journalists
<i>Apakabar</i> (INDONESIA-L)	The first email discussion list consists of a mix of uncensored and unedited ‘hard news’ and commentaries mainly using Indonesian language which is central to political communication between the critics of the New Order inside and outside of Indonesia, and moderated by John MacDougall in Maryland in the United States
APJII	Asosiasi Pengelola Jasa Internet Indonesia (Indonesia Internet Service Provider Association)
Bappenas	Badan Perencanaan Pembangunan Nasional (National Development Planning Agency)
Boedi Oetomo	The first native political society in the Dutch East Indies which was founded on May 20, 1908 and considered as an instrumental on the beginning of the Indonesian National Awakening.
BPPT	Badan Pengkajian dan Penerapan Technology (Agency for the Assessment and Application of Technology)
BP3TI	the government’s Telecommunications and Informatics Funding Provision Management Agency
BRTI	Badan Regulasi Telekomunikasi Indonesia (Indonesian Telecommunication Regulation Body)
BTS	Base Transceiver Station
CEO	Chief Executive Officer
CIPG	Centre for Innovation Policy and Governance
CSO	Civil Society Organisation
DGPT	Directorate General of Post and Telecommunication
DNA	Discourse Network Analysis
Deppen	Departemen Penerangan (Department of Information)
DPR	Dewan Perwakilan Rakyat (People’s Representative Council)
Dwifungsi ABRI	A dual-function of Indonesian Armed Forces
ELSAM	Lembaga Studi dan Advokasi Masyarakat (Institute for Policy Research and Advocacy)
FDD	Digital Democracy Forum (Forum Demokrasi Digital)
FGD	Focus Group Discussion
Forkot	Forum Kota (City Forum); Komunitas Mahasiswa seJabotabek (All-Jabotabek Student Community)
GBHN	State Policy Guidelines
Hankam	Pertahanan Keamanan (Ministry of Defense and Security)

HIVOS		an international development organisation guided by humanist values
Indonesia Exchange	Internet	The national interconnection point for Internet Service Providers in Indonesia, launched in August 1997 and operated by APJII
IBP		Indonesian Broadband Plan
ICJR		Institut untuk Keadilan dan Reformasi Kejahatan (Institute for Criminal Justice and Reform)
ICT		Teknologi Informasi dan Komunikasi (Information and Communication Technology)
ID-CONFIG		Indonesia CSOs Network for Internet Governance
ID-IGF		Indonesia Internet Governance Forum
IGF		Internet Governance Forum
IMDLN		Indonesia Media Defense Litigation Network
ISP		Penyedia Layanan Internet (Internet Service Provider)
ITB		Institut Teknologi Bandung (Bandung Institute of Technology)
ITE		The Law of Electronic Information and Transaction
JKN		Jaminan Kesehatan Nasional (a national health program)
KITA		Koalisi Internet tanpa Ancaman (Internet without fear coalition)
KPI		Komisi Penyiaran Indonesia (Indonesian Broadcasting Commission)
KUHAP		Kitab Undang-Undang Hukum Acara Pidana (Criminal Civil Code)
LBH Pers		the Legal Aid Institute for the Press
Menristek		Menteri Riset dan Teknologi (Minister of Research and Technology)
MCI		Kementerian Komunikasi dan Informatika (Ministry of Communication and Information)
MP3EI		Masterplan Percepatan Perluasan Pembangunan Ekonomi Indonesia (Indonesia Economy Development Expansion Acceleration Masterplan)
MUI		Majelis Ulama Indonesia (Indonesian Ulama Council)
New Order		Orde Baru (the political configuration under Suharto between 1966 and 1998)
NGO		Non-Government Organisation
Old Order		Orde Lama (the Suharto government's term for the Sukarno era)
Pancasila		Five fundamental principles of Indonesian people
PANDI		Indonesian Association of Domain Name
PBHI		the Indonesian Legal and Human Rights Aid Association
P4		Orientation in Life and the Implementation of Principles of Pancasila
PETA		An Indonesian volunteer army established in 1943 to assist Japanese forces towards a possible invasion by the Allies

Pijar	Pusat Informasi dan Jaringan Aksi Reformasi (Centre for Information and Action Network for Reform), the first online Indonesian political group established by student activists as a 'mechanism for democratic struggle' in September 1989
Prolegnas	Program Legislasi Nasional (National Legislative Programme)
PT Indosat	A commercial and big Internet Service Provider
PT Telkom	the largest state-owned monopoly telecommunication company in Indonesia
RADNET	The first commercial Internet company in Indonesia together with Indo.Net in the middle of 1995
Reformasi	Order to mark Suharto resignation in May 1998
Repelita	A five-year Development Program
RPJMN	Rencana Pembangunan Jangka Menengah Nasional (National Medium-term Development Plan)
RRI	Radio Republik Indonesia (Radio of Republic of Indonesia)
Rukun Tetangga	A system of organizing neighbours led by a leader for every neighbourhood block
Rukun Warga	A system of several <i>Rukun Tetangga</i>
SAFENet	Southeast Asia Freedom of Expression Network
SIKA	Sahabat untuk Komunikasi dan Informasi yang Adil (Friends for Fair Information and Communication)
SIUPP	Surat Ijin Usaha Penerbitan Pers (government publication licence)
SKJ	Senam kesegaran jasmani (A national physical exercise practiced every Friday morning at schools and public offices)
SNS	Social Networking Sites
Sumpah Pemuda	A declaration made on 28 th of October 1928 by young Indonesian nationalist at a conference in the Dutch East Indies
Televisi Masuk Desa	Suharto's program of portraying an image of unification under <i>Palapa</i> satellite
TKTI	Tim Koordinasi Telematika Indonesia (the Telematics Coordinating Team)
TVRI	Televisi Republik Indonesia (Television of Republic of Indonesia)
UI	Universitas Indonesia (University of Indonesia)
UKP4	Unit Kerja Presiden bidang Pengawasan dan Pengendalian Pembangunan (President's Delivery Unit on Development Monitoring and Oversight)
Unpad	Universitas Padjadjaran (Padjadjaran University)
USO	Universal Service Obligation
UU	Undang Undang (Law, Act)
Warnet	Warung internet (internet café or kiosk)

Introduction

Information and communications are central to human life and social development. Sharing information and knowledge through printed and electronic communications channels is something that people commonly do. This practice allows individuals and communities to learn to improve their capacity to work together and to contribute more to society as a whole. The developments in information and communications technology, particularly the Internet, have made possible major changes in our capacity to communicate and share information.

These changes provide various ways for effective communication, but their availability and accessibility to citizens and communities depends on decisions made by many other people in government, business and civil society - decisions that often seem obscure, technical or specialised but which have profound implications for the future of society. To be involved in the Information and Communication Technology (ICT) policy-making process should be a priority for most people given that new communications media are becoming so prevalent and the way ICTs develop will have an enormous impact on the possibilities of working for social justice and sustainable development. An active part in ICT policy-making is essential if we want to have a voice in how our societies develop and how the future unfolds.

ICT is a generic term used to express the convergence of information technology, broadcasting and communications. One prominent example is the Internet. According to the Organisation for Economic Cooperation and Development (OECD), the definition of ICT is “the means of generating, processing, transporting and presenting information”. It is an information-handling tool or rather a variety of goods, applications, programs, and services that are used to store, transmit, produce, process, distribute and change information (2002, p. 243). Policy is defined by the Oxford English Dictionary as “A course of action, adopted and pursued by a government, party, ruler, statesman, etc.; any course of action adopted as advantageous or expedient” (Trist & Murray, 2016, p. 491). This definition suggests that policy is the realm of those in power such as governments or official institutions. However, in a general sense, it could include the vision, goals, principles and plans that guide the activities of many different actors.

ICT policy generally addresses three main areas: telecommunications (especially telephone communications), broadcasting (radio and TV) and the Internet, with a view to stimulating private sector growth and creating job opportunities. A research study has found that for every 10 percent increase in broadband penetration, the positive impact on GDP growth is 1.21 to 1.38 percent (*Trends in Telecommunication Reform 2010–2011: Enabling Tomorrow's Digital World*, 2011). A healthy and vibrant ICT sector may also contribute to more equitable social development and an efficient public sector by building human capacity and creating conditions for the development of relevant ICT applications and content (*The IT-BPM Sector in India: Strategic Review 2014*, 2014). ICT policies and strategies also include almost all areas of activity that impact quality of life such as health, education, agriculture and culture. They can be integrated into sectoral as well as broad national policies and strategies.

The thesis will look at the Indonesian internet policy development landscape with a focus on the process of the development and implementation of the Law of Information and Electronic Transaction (ITE). In this thesis I will discuss the process that led to the formation of ITE, starting with its initial draft in 2003 and enactment in 2008 to its revision in 2016. The aim is to understand the complexity of ITE development process to illustrate the response of the Indonesian government towards the Internet. By working with three Civil Society Organisations (CSOs) chosen and Giddens' structuration theory, this thesis aims to obtain a comprehensive analysis on ITE formation, implementation and review process in Indonesia and to highlight strengths and weaknesses evident in its process. The thesis is important in contributing suggestions on how the process could be improved by improving the level of broader public priorities and participation in ITE formation and implementation.

ICT has been used as a supporting tool to do work faster and easier and as an important means in distance communication between people in different regions. As the numbers of Indonesian Internet users have been increasing since the end of *Reformasi* years (1998-2000), to approximately 143.26 million users in 2017 which is a half percent of Indonesia's total population (262 million people), there have been some shifts in the types of Internet use by Indonesian people. According to a research study conducted by the Association of Indonesia Internet Service Provider (Asosiasi Penyedia Jasa Internet Indonesia, 2017) and Teknopreneur.com in 2017, Indonesians used the

Internet mostly for socialising through social media and economic activities such as searching for products' price and online purchasing. This is due to the increase of availability of social media, microblogging and instant messaging applications. Trends in e-commerce also increased and placed women as the most active actors in this practice. 12.82% of women in Indonesia received or placed orders of goods/services compared with 10.06% of men. Female e-commerce users in DKI Jakarta, Kalimantan Timur, and Kalimantan Utara numbered more than 20% (Hasyiyati, 2017:7). In addition, 49.52 percent of the total Internet users in 2017 were people aged 19-34 years old in urban areas in Java island and they accessed the Internet mostly using smartphones (Asosiasi Penyedia Jasa Internet Indonesia, 2017) This research showed that most Indonesian relied on smartphones for Internet connection due to a limited access of Internet infrastructure across Indonesia.

Despite the fact of promising changes in Internet use in Indonesia, the country still has to deal with some challenges such as an uneven population distribution: 53 percent of the total population live in urban areas and the remaining 47 percent live in rural areas across the archipelago of more than 18,000 islands. For instance, Jakarta and Surabaya, which are more urban than other provinces in Indonesia, have a high population density. Among the other largest cities in Indonesia, Jakarta and Surabaya have 80 percent of 3G base stations. These conditions have created a highly concentrated Internet infrastructure and number of users in large cities on Java, so that Java accounts for 65 percent of users (Nashiruddin, 2016). These conditions also create a substantial challenge for the business sector, telecommunications companies and government as regulators to establish and develop telecommunications infrastructure that supports Internet penetration in economically disadvantage areas.

Fostering a nation's social and economic strength through ICT requires a sufficient institutional framework of governing ICT policies and strategies. As broadcasting, telecommunication and information technology has converged, it has been suggested that a certain level of cooperation among the agencies responsible for those converging industries must take place initially, in order to regulate ICT under a single political framework. In other words, a regulator encompassing broader industries and sectors needs to be created. As the use of the Internet expands within a country, issues like

privacy and security, intellectual property rights, and content and access regulations start to emerge (Gryseels, Manuel, Salazar, & Wibowo, March 2015).

ITE as ICT Policy in Indonesia

ITE is the major law for Internet regulation in Indonesia, was initiated in 2003 and enacted in 2008 in response to a gap in ICT and Internet regulations and governance. This is because the extant Law of Telecommunication (1999) was not equal to the task due to its narrow focus on infrastructure (Suardi & Redfearn, 2003). The long process of ITE development and implementation which took 5 years since its initiation in 2003, indicates that there were some challenges in producing policy and regulations to cover all areas of ICT sectors. These areas represent the interests of every actor involved in the policy-making process, such as government, big business and the public in general (represented in this thesis by civil society organisations (CSOs)) The below is an initial overview but more detail will be explain later in chapter 4.

The ITE itself, according to the Ministry of Communications and Information, aims to regulate any online transactions and activities and any prohibited acts using ICT as a tool. It consists of thirteen chapters and fifty-four articles that regulate online business and information systems. It also applies to anyone who commits cybercrimes such as illegal content like spreading hate speech through social media and child pornography; and misuse of devices like access interception, data and system interference, in and outside Indonesia, which might harm Indonesians. The ITE's intent is to facilitate e-commerce by formalizing or introducing measures such as guaranteeing the acceptance of electronic or digital signatures as legal evidence in the courts of Indonesia.

ITE was enacted during President Yudhoyono's second term of government, in which the policy-making process was placed under considerable pressure from public and vocal civil society organisations to accelerate Indonesia's economic and social development. The character of the post-*Reformasi* era under the Yudhoyono's administration contributed to the style of relationship between various stakeholders, involving a high level of political competition at the cabinet level over decision-making. Contests over coalition politics, the appointment of ministerial posts between the president and the leaders of coalition parties, and an intense inter-ministerial

bureaucratic competition over territory and resources created major coordination problems and affected a focus on economic policy (Datta et al., 2011, pp. 67-69).

Soon after ITE was implemented, questions were asked about its definitions of what is legal in online posts and activities and about the penalties for anyone found guilty of violating them. Three articles in particular: article 27 on defamation; article 28 on hate speech or blasphemy based on ethnic, religious, racial and inter-group relations; and, article 29 on online threats are considered the most problematic (Djafar & Abidin, 2014). As mentioned above, the escalating ITE infringements that have occurred since 2009 suggest a lack of understanding of the regulations by Indonesian people, and call into question the level of broader public priorities and participation in its formation and implementation.

The Question: How can better ICT Policy be built in Indonesia and whose agency needs to be deployed more effectively for this to be the practice?

Indonesia has travelled different types of governance since its independence in 1945: Beginning with the several kinds of democracy during Sukarno government (1945-1965), moving towards an authoritarian regime under Suharto's New Order (1966-1998), and in the process of consolidating a democratic society after *Reformasi* (1998-2000). The process of ICT policy development in Indonesia lends itself to analysis of the relationship between the state/government and society. It involves examining the dialogue between government and the public from different sectors such as the private sector, civil society organisations and citizens in general. Democratic values of openness, accountability and public participation are investigated within this thesis with regard to such a dialogue.

Therefore, there is a need for research that examines the process of ICT policy development within specific political and social dynamics. This research project provides an empirical context to the above area of study by examining the process of ICT policy development in Indonesia through an examination of the actors' participation within the process, including assessing whether the process and the practice are in line with the principles of good democracy. A "good" democracy is important for Indonesia to achieve its national goal of social welfare for all Indonesians as stated in *Pancasila*. This type of democracy might be interpreted in Indonesian

context as an environment that supports people's everyday activities and their relationship with their government. As Merkel and Croissant argue, a "good" democracy is commonly described as a stable institutional structure that realises the liberty and equality of citizens through the legitimate and correct functioning of its institutions and mechanisms (Merkel & Croissant, 2004, p. 200).

This study finds that the process of ICT policy development in Indonesia may be described as a continuum of connections between the three main actors: the CSOs, the government and the big business sectors, within a context of ITE debates. The connections vary over time from a contestation into a collaboration and then back to contestation. This study also demonstrates that there are certain flaws within the ITE that are linked with some cases of ITE violation, in particular related with digital freedom of expression.

An analysis of CSOs' role in ITE implementation and review in Indonesia in this thesis shows that the three CSOs observed have implemented strategic and practical activities within their programs to work within and outside the system of policy-making. And that the involvement of these groups may help mitigate the problems displayed in the policies' development and implementation.

Objectives and Significance of the Study

In general, this research examines the process of ICT policy development in Indonesia by looking at practices conducted and contested by actors involved in the process, such as government, big business and CSOs. It uses ITE as the case study and Giddens' theory of structuration as its theoretical framework.

More specifically, the sub questions of this study are: how has ICT policy developed in Indonesia following the enactment of ITE in 2008 and how could the process be improved? To answer these questions, this study addresses three objectives:

1. To examine the process of ITE formation, implementation and review.
2. To investigate responses and contributions made by CSOs in ITE post-implementation and revision process.
3. To recognise challenges and limitations of a revised ITE and ICT environment.

In order to achieve these objectives, this study uses a case study of ITE, its process, implementation and review, with a focus on the period following the enactment of the ITE. This study also works with three CSOs, *ICTWatch*, *Satudunia*, and *Medialink* to obtain an illustration of public participation at national and local level within the process of ICT policy development. *ICTWatch*, *Satudunia*, and *Medialink* were chosen because their programs' focus on the usage of information, technology and the Internet.

In particular, *ICTWatch* has started its campaign on Internet usage since 2002 with a recent program of 'Internet governance'. Meanwhile *Satudunia* and *Medialink* have conducted some programs in information and technology use for activists, local communities and marginal groups in some villages in East Java. The case study examines certain flaws in the ITE and provides CSOs' responses and contributions towards ITE implementation and review. The ITE case study, and the examples of three CSOs' responses in ITE implementation and review, combined with the use of Giddens' theory of structuration in analysis, allow for further understanding of the complex process of ICT policy development in Indonesia.

The significance of this research is its analysis of the ICT policy development process for Indonesia, in a non-Western context. This study aims to contribute to the body of literature on policy process and development studies. In relation to a non-Western context of literature, this research adds consideration of policy process and development studies within the context of a different understanding of cultural, religious, legal, and democratic processes in Indonesia.

Indonesia is an archipelagic and multicultural nation, with a majority Muslim population and placed as the fourth most populated country in the world. These characteristics contribute to the study of public participation in policy development in a non-Western perspective. The background of Indonesian geography and demography will be described later in Chapter 1. By analysing the interactions and participation between the stakeholders in ICT policy development, the study will examine state-society relationships that takes place in the ICT sector in Indonesia and identify what actions and initiatives are conducted by CSOs in ITE implementation and review processes. By illustrating CSOs' activities in ITE implementation and review processes, this study provides a contextualised explanation of public participation in the ICT policy development process in Indonesia.

Research Methods: Interviews, fieldwork and analyses of secondary material

The nature of this study was largely qualitative. It consisted of an empirical analysis of ICT policy development in Indonesia which was examined through a case study of the ITE. ITE is a major law in Indonesia, enacted in 2008, which regulates the usage and applications of ICT, specifically the Internet. Case study “is a description and analysis of an individual matter or case [...] with the purpose to identify variables, structures, forms and orders of interaction between the participants in the situation (theoretical purpose), or, in order to assess the performance of work or progress in development (practical purpose)” (Starman, 2013, p. 31). I chose a case study for this research to obtain an in-depth exploration of the complexity and uniqueness of a particular policy. Case study was used to describe and analyse the complex process of ITE and CSOs’ programs surrounding ITE implementation and review process. The description and analysis of ITE development process and CSOs’ programs were studied culturally, holistically, and analytically.

This study used three research methods: interviews, fieldwork and analyses of secondary materials such as government reports, online resources (research reports and publications) and news of ITE implementation and review, and government initiatives in ICT development available in electronic formats. A comparative example of Malaysia’s experience towards ICT policy development will also be explored in one of the thesis’ chapter to provide a broader contextual understanding of ICT policy development in the Southeast Asian region.

Like Indonesia, Malaysia is a postcolonial nation-state that gained independence in the mid-twentieth century. Whereas Indonesia has shed any notion of hereditary rulers and been working its ways towards democracy over decades, Malaysia has retained some parts of its monarchy and is governed as a federation. At the same time Malaysia is, similar to Indonesia, a developing nation with a young and Muslim-majority population. As such, a discussion of Malaysia offers a comparative example of how differently ICT policy could have developed within similar parameters.

Interview is the one of the methods I use in this research. As described by Dunn (2005, p. 80), interviews are used for collecting “a diversity of meaning, opinions and

experiences”. They also “provide insights into the differing opinions or debates within a group, but they can also reveal consensus on some issues”. I used semi-structured interviews in order to get first-hand accounts of CSO perspectives on their experiences in the process of ICT policy development in Indonesia. It was necessary to make sure that the interviewees should be those with specific knowledge about the work of CSOs. The interviews were conducted with key persons from three CSOs, *ICTWatch*, *Satudunia*, and *Medialink*, in Jakarta, Indonesia during January 2014 and August 2015. I contacted the key persons by email first, then after I had a reply from them, I called them to make appointments for interviews. The key persons were identified by recognising the persons’ contributions to ICT policy development, their knowledge and leadership positions in each CSOs.

An interview guide was used in the interviews to provide an early direction for the research. Follow-up emails with the informants were performed where further information was required. Overall, there were four interviews, all conducted in the Indonesian language, recorded and fully transcribed by a professional translator. Due to a very specific choice of CSOs, this study did not cover or make claim to represent all CSOs related to ICT and the Internet in Indonesia. A limitation in the numbers of interviews in this research due to a time constraint was also a challenging factor in forming a thorough analysis of the process of ICT development in Indonesia and CSO’s participation.

Fieldwork was conducted by attending a business exhibition, Indonesia Infrastructure Week 2015, and a symposium on ‘National Broadband and Cyber Security’ in Indonesia in November 2015, to observe the recent activities and initiatives of big business in telecommunications and ICT development, particularly in infrastructure development. This fieldwork provided insight into some of the practices in the business environment regarding development of ICT infrastructure in Indonesia.

In order to enrich data from interviews and fieldwork, this research has also drawn upon secondary materials such as government reports, online resources (research reports and publications) and news of ITE implementation and review, and government initiatives in ICT development available in electronic formats. I have also relied on a wide range of documents from various government sources, such as the National Planning Agency (Bappenas) and the Ministry of Communication and

Informatics due to a limitation of interviewing the Indonesian officials. I also consulted reports and publications from research institutions such as the Institute of Policy Research and Advocacy (ELSAM), the Institute for Criminal Justice and Reform (ICJR), and other CSOs which focus on ITE violation cases and assistance programs like the Southeast Asian Freedom of Expression Network (SAFE-net) and the Digital Democracy Forum (FDD). Although some of the documents, specifically government documents, were not publicly accessible, reports and publications from research institutions were publicly accessible and important in supporting my analyses.

Thesis Structure

This thesis is structured into seven chapters. Chapter One explains the Indonesian topography, demography, religion, and political system to give a background to understand challenges and main issues in Indonesia for Internet development. The current conditions of Internet use and distribution in Indonesia are also explained to relate to the research questions. This chapter also introduces different historical presidential stages in Indonesia to be discussed later in Chapter three.

Chapter Two explains the theoretical framework and research methods of the thesis. Structuration theory is introduced to understand the complexity of multiple layers and actors in Internet policy development in Indonesia. Definitions, terminologies, approaches and some key words in Giddens' structuration theory are also explained. This chapter also introduces actors broadly and explain interviews as the method used within the research: How the interviews were undertaken, for what purpose, who the informants were and why they were chosen.

Chapter Three explains the intrinsic connection between the Internet and democracy in Indonesia, especially the *Reformasi* effect on understanding the Internet and social changes. This chapter explores the development of the Internet users in Indonesia in relation to Indonesian political engagement and the development of new political space in the lead up to *Reformasi* (reform) and afterwards.

The central point in this chapter is the 1998 *Reformasi*, which is argued here to have had a profound impact on the growth of communication, civil society and democracy in Indonesia. The existence of such democratic space in *Reformasi*, helped by internet in Indonesia, can be observed in three aspects, people power, voicing dissent and

empowerment. This chapter also provides a context for understanding changes in the ways Indonesian people communicate, express their opinions, and empower themselves as the effect of democratising the internet.

Chapter Four examines telecommunication and Internet infrastructure development approaches in Indonesia through tracing the various government changes from 1983 to 2016. It provides the context for understanding the ongoing transformations of Indonesia's Internet strategies towards the Internet. It demonstrates that there have been overlapping law and governance of Internet and in governments' approaches in regulating the Internet in Indonesia from 1983 to 2016. The central question this chapter asks is: how have telecommunication and Internet infrastructures and policies developed in Indonesia since the Suharto era?

Chapter Five analyses and breaks down the ICT policy formation process using the theoretical framework of Giddens' structuration theory. In particular, it seeks to view the policy formation process through the macro and micro lens of Giddens' structuration theory to understand the background process of ITE formation and the intersection of the Indonesian government, big business and CSOs. The example of Malaysia is introduced here to provide broader contextual understanding of ICT policy development in the Southeast Asian region. Looking at Malaysia's experience in developing internet policy as an example is also appropriate because Indonesia and Malaysia share several other similarities. Despite these similarities, Indonesia has by far the greater challenge due to the much larger population and challenging topography of its archipelagic land. Starting with Internet's arrival in the region in the mid-1990s, each country sought to implement ICT policy and move from a monopoly towards privatisation, with quite different results. The system of government of Malaysia has provided conditions that are favourable for ICT policy development and their national economy. For example, Malaysia's better established telecommunication infrastructures have allowed the nation to form ICT policy more quickly than other countries in the Southeast Asia, with the exception of Singapore. Indonesia, in contrast, was still undergoing vast political changes during the latter part of the 1990's and hence, still lacks adequate telecommunication infrastructure throughout the archipelago.

Chapter Six illustrates a case study of ITE and its issues that have arisen post-implementation to understand the flaws with the policy, its implementation and review. The investigation attempts to explain how the public's participation during this period, via the CSOs, provides feedback to the ITE implementation review process. The analysis is based on document reviews, face-to-face and follow-up e-mail interviews with key leaders from *ICTwatch*, *Satudunia* and *Medialink*. I also collected some additional information from other CSOs in general such as FDD (Digital Democracy Forum), ICJR (Institute for Criminal and Justice Reform) and ELSAM (Institute for Policy Research and Advocacy). I chose these CSOs because they have conducted some research, campaigns and analysis informing the ITE review process since 2010. By understanding ITE flaws and analysing CSOs' activities with regard to ITE post-implementation review, interactions of social practices within the structure of a social system can be examined.

Finally, Chapter Seven analyses some aspects in the ITE formation process which can be improved to formulate a policy that regulates the usage and applications of the Internet specifically, integrates other regulations, and meets expectations from different publics in Indonesian society. These aspects are challenges of Indonesian internet infrastructure and access, problems of digital media literacy among Indonesians, the politics of policy making process in Indonesian government system, and the expectations of the public, CSOs and big business.

Chapter 1. The Internet in Indonesia

Introduction

The chapter is about the Indonesian context of topography, demography, religion and political system as a background to understand challenges and main issues in Indonesia for Internet development since its arrival in 1994 (Lim, 2006b, p.94) and its growing usage to recent days. The chapter also explains current conditions of Internet use and distribution in Indonesia related to the research questions, including the complexity of multiple layers and actors in Internet policy development in Indonesia. The complexity of different historical presidential stages in Indonesia is also introduced in this chapter to be discussed later in details in Chapter three.

Known as a huge archipelagic country, Indonesia has 13,667 islands which extend 5,120 kilometres from east to west and 1,760 kilometres from north to south. There are five main islands: Sumatra, Java, Kalimantan, Sulawesi, and Papua. Two of the islands are shared with other nations: Kalimantan is shared with Malaysia and Brunei; and Papua shares the island with Papua New Guinea. Strategically positioned between the Pacific and Indian oceans, Indonesia's total land area is 1,919,317 square kilometres. The additional surrounding sea areas together with an exclusive economic zone bring Indonesia's territory (land and sea) to about 7.9 million square kilometres (Statistics Indonesia, 2015).

Due to the country's features of numerous mountains, tectonic plates and some active volcanoes which can be found in almost every islands, natural disasters are common in Indonesia. The tallest mountain is located in the *Jayawijaya*, Papua. In addition to the mountainous landscape, much of the islands are covered in thick tropical rainforests that give way to coastal plains and support biodiversity in the world (State Ministry of Republic Indonesia, 2010). This geographic conditions have been major challenges for Indonesian government in developing telecommunication infrastructure. Bridging and connecting people in different islands and areas have become a main task for Indonesian government in infrastructure development programs. And this task certainly demands for a budget which is not minor.

Meanwhile, Indonesian demographic conditions range from its large population of 254.5 million people, a GDP growth of 5% and an inflation rate of 6.4% in 2015. Half of the population are below 30 years of age and live in urban areas mostly in Java and western parts of the country. Nearly half of Indonesia's population lives in rural areas (Worldbank, April 2016). 90% of Indonesians are of Malay origin, half of whom belong to the Javanese ethnic group. There are also Chinese and Indian minorities. Islam is the major religion of 85.2% of the population, designating Indonesia as the largest Muslim country in the world. The remaining population consists of Protestants (8.9%); Catholics (3%); Hindus (1.8%); Buddhists (0.8%) and other religion (0.3%). The official language is Bahasa Indonesia, which is similar to Malay. The barriers of the mountain and the sea have shaped the character and traditions of many groups among islands in Indonesia which reflect a great cultural diversity (Statistics Indonesia, 2019).

The Indonesian political system

Indonesia has 33 provinces (including 2 Special Territories of Nanggroe Aceh Darussalam and Yogyakarta) and one Special Capital Region of Jakarta (DKI). East Timor was once part of Indonesia, but then through a referendum in 1999, East Timor became the Democratic Republic of Timor Leste (Molnar, 2010, p.85).

Indonesia is a democratic country that applies a presidential system and *Pancasila* is the soul of the Indonesian democracy. *Pancasila* or The Five Principles is the official, foundational philosophical theory of the Indonesian state. It is composed of five principles and contends that they are inseparable and interrelated: Belief in the One and Only God, a just and civilized Humanity, a unified Indonesia, Democracy, led by the wisdom of the representative of the People, and Social justice for all Indonesians (Lindsey & Butt, 2012). The 1945 constitution invests most of the power in the executive branch of the government, particularly in the president, who is assisted by a vice president and a cabinet. As in other democratic countries, Indonesia applies the *Trias Politica* that recognizes the separation of the legislative, executive and judicial bodies. The executive institution is centralized under the president, vice president, and the cabinet of ministers. The cabinet is a presidential cabinet in which the ministers report to the president and do not represent the political parties (Bourchier & Hadiz, 2003, p. 260).

The legislative authority is under the People's Consultative Assembly (MPR) that consists of two bodies namely the Parliament composing of members of political parties and the Regional Representative Council (DPD) composing of representatives from each province in Indonesia. Each province is represented by 4 delegates that are elected by the people in the respective region. The People's Consultative Assembly (MPR) is the highest state institution. Upon the Amendment of the 1945 Constitution, the membership of the MPR starting the period of 1999-2004, was amended to include not only the members of the parliament (DPR) but also the members of the DPD. Formerly the MPR consisted of the parliament members and group representatives. Currently, the MPR has 550 members from the parliament and 128 members from the Regional Representative Council (DPD). The parliament members and the DPD members are elected every five years. Since 2004, the MPR has become a bi-chamber parliament with the DPD as second chamber. The judicial institution -since the reform era and upon the amendment of the 1945 Constitution- is administered by the Supreme Court including the administration of the judges (Lindsey & Butt, 2012).

Telecommunication and the Internet in Indonesia

Since the late 1970s, immediate links between distant places in Indonesia have been established through telecommunications technology. The use of satellites, purchased by Indonesian public and private telecommunications companies, revolutionized the system. A unique solution to the general lack of telecommunications facilities was the establishment of neighbourhood *wartel* ("telephone shops"), where customers can make domestic or international calls and send or receive faxes for a time-based fee. However, with the rapidly expanding use of cell phones, *wartel* are playing a less critical role in the Indonesian telecommunications system. An increase in Internet usage has been attributable largely to the introduction of *warnet* ("Internet shops") in major cities.

The Internet in Indonesia has grown remarkably from its earliest introduction in 1994 to the present. The post-*Reformasi* years since 1998, in particular, have seen Internet technologies multiplied and developed at a rapid rate, even as Indonesia experienced drastic change across the political, social, economic and cultural fronts. A report conducted by APJII (the Indonesian Internet Service Provider Association) in 2017, revealed that there were 143.26 million Indonesians connected to global networks

where they socialised, searched entertainment, conducted economic transactions and were politically engaged and mobilised over the Internet. As of date, 70 percent of the Indonesian internet users access the internet mainly and heavily through their mobile devices.

Usage of the Internet in Indonesia can be characterised as mainly dominated by young people (aged 19-34 years) who are concentrated in urban-middle classes and based in Java (Asosiasi Penyedia Jasa Internet Indonesia, 2017). Since the Yudhoyono government, substantial emphasis has also been placed on the potential of a digital economy for Indonesian economic growth. At the same time, there has been recognition that in order for the digital economy to become reality there are two main issues that need to be tackled from the point of view of Internet users: access and digital literacy.

The issue of access is primarily a consequence of Indonesia's geographic spread as an archipelagic nation and the cost of creating the necessary physical infrastructure to make the Internet available across all 34 provinces. Infrastructure has been an issue for the Indonesian government to improve internet penetration across Indonesia because it requires a high cost establishment for internet infrastructure especially for the eastern regions of Indonesia. So far, the cost has been shared between private and public purses.

Therefore, in order to address these issues of topography and cost, the Indonesian government initiated The Palapa Ring Project in 2009 to improve the internet infrastructure across Indonesia. The Palapa Ring Project is a telecommunications infrastructure project through the development of a 36,000 km fibre-optic line, divided into the West Palapa ring, the Central Palapa ring, and the East Palapa ring. The project is only completed for the western and central regions of the nation. At present, The Palapa Ring Project is at its second stage of development for the eastern region and is estimated to be completed in 2019 (Ministry of Communication and Information, 2014).

During the two periods of President Yudhoyono's leadership (2004-2014), there have been initiatives of ICTs development program attempted. The development of urban hotspots, wireless telecommunication, the connected village (Desa Berdering) project

for remote and blank-spotted villages in Java, the village internet (Desa Internet), the operation of mobile internet vans for remote areas of Indonesia, the convergence technology blueprint, and the ICTs milestones are among the programs and projects initiated and implemented by the government.

There have also been initiatives to share the cost of building internet infrastructure for remote areas in the eastern region by the Ministry of Communication and Information (MCI). Since 2016, the MCI has begun to urge the principle of network sharing between *Telkomsel* and other telecommunication providers for remote areas. The initiative was named active sharing concept which was a mechanism of telecommunication infrastructure sharing among active telecommunications providers in the country and was designed to enable cost-effectiveness in the telecommunications industry. The active sharing concept, at present named 'network sharing concept' according to the MCI, is able to make the telecommunications industry more efficient, affordable and sustainable. Although the implementation of 'network sharing concept' is still on-going process due to an absence of government regulation support and a disapproval from certain telecommunications provider, the initiative was considered to be the beginning of a consolidation process in Indonesian telecommunication infrastructure among telecommunication service providers (Panji, December 8, 2015).

Internet access and infrastructure are seen as important by the Indonesian government who believe these things are vital for economic growth and social cohesion, therefore, the MCI has developed a government strategic plan 2015 – 2019 which focuses on three aspects: the improvement of telecommunication infrastructure through broadband connectivity, internet governance and digitalisation of television broadcasting.

The usage of broadband connectivity, according to the MCI, has an important role in creating the conditions for sustainable economic growth and improving social welfare. The effects of broadband connectivity will impact the economic growth factors such as innovation, the emergence of new goods and services, new business models, and will increase competitiveness and flexibility in the economy. The MCI says, "1% of fixed-broadband penetration is expected to decrease the amount of 8.6% unemployment rate and 10% of it is targeted to boost economic growth by 1.38%. The

broadband connectivity program is supported by a priority agenda of broadband infrastructure development such as deploying a nation-wide network of fibre-optic backbone (Palapa Ring Project) to connect 497 districts and cities across Indonesia” (Ministry of Communication and Information, 2015b).

The second focus of the Indonesian government strategic plan 2015 – 2019 is internet governance. Internet governance is a program to improve information security, to encourage the growth of e-commerce, to implement the Domain Name Service (DNS) framework to reduce illegal content, and to integrate e-government services. The program is conducted through some strategies such as establishing referral standardization of security and applying strategic electronic system certification, formulating a national roadmap of e-commerce, collecting data proliferation of e-commerce and developing the number of start-up company, establishing a ministerial regulation of DNS and implementing a national DNS nation-wide, developing a master plan and ensuring the establishment of a presidential regulation of e-government as the basis for the implementation of e-government services and integrating database and e-government services in governmental agencies.

The third focus of the Indonesian government strategic plan 2015 – 2019 is the digitalisation of television broadcasting. The program is considered to improve the efficiency of frequency spectrum usage, broadcasting industry infrastructure, and to accelerate new business opportunities for content industry. The digitalisation of television broadcasting program is supported by several agenda such as to accelerate migration process of analogue to digital television, to develop policies and regulations that support the migration process, and to step-up the revision process of the Law of Broadcasting.

However, Internet access alone will not bring all the advantages of a digital economy to Indonesians. Digital media literacy, defined as the ability to assess, evaluate and differentiate between the various forms of information and sources available online and, the shifting etiquette that governs norms, behaviour and interactions between users on a multiplicity of platforms is crucial to Indonesians’ ability to use the Internet competently and legally. Digital media literacy is linked to the development of Information and Communication Technology (ICT) education at schools and homes. But what passes for acceptable online behaviour in Indonesia is a social and cultural

norm closely related to Indonesia's identity as a multicultural nation with a majority Muslim population.

Belated attempts to define standards for online interactions through laws such as the Law of Information and Electronic Transaction (hereafter ITE)¹ have been made but much remains subject to interpretation and contestation. The ITE is the key focus of this thesis and introduced above as an attempt by the Yudhoyono government to adjust the policy surrounding Internet use and bring it level with technological as well as socio-political and economic developments in and surrounding Indonesia. However, the ITE remains a controversial policy because although its shortcomings (which I return to later) were apparent from the start, it has taken up to 2016 for this flawed piece of legislation to be revised.

Prior to the enactment of ITE in 2008, the law dealing broadly with the telecommunication industry was the 1999 Telecommunication Law (Lee & Findlay, 2005, p. 354). Enacted in 2000 in the early days of commercial Internet in Indonesia, the Telecommunication Law was designed to create space for greater competition among Internet Service Providers (ISPs). Hence, its concerns were not with user practices, online behaviour or content. This was understandable as online content creation in Indonesia did not begin until 1998 (Lim, 2003c, p. 279).

In this thesis I discuss the process that led to the formation of ITE, starting with its initial draft in 2003 and its enactment in 2008 to its revision in 2016. The aim is to understand the complexity of ITE development process to illustrate the response of the Indonesian government towards the Internet. By working with three CSOs and applying Giddens' structuration theory as an explanatory heuristic, this thesis aims to analyse ITE formation, implementation and review process in Indonesia and to suggest how the process could be improved.

ICT policy governance structure

It is important to note that in Indonesia the responsibility and direction for the ICT environment is split between two government bodies: the Directorate General of Post

¹ An English translation of the legislation is available at:
http://www.flevin.com/id/lgsa/translations/JICA%20Mirror/english/4846_UU_11_2008_e.html

and Telecommunication (hereafter DGPT) and; the Indonesian Telecommunication Regulatory Body (hereafter BRTI). The DGPT is in charge of telecommunications and Internet infrastructure applications while the BRTI is the primary regulatory decision-making body (Lee & Findlay, 2005, p. 358).

BRTI was established in 2003 to ensure the principles of transparency, independence and fairness in telecommunication network and service operations. This body is responsible for regulating, supervising and controlling the implementation of telecommunication networks and services (Meurling, Grainger, Sawitri, & Redfordi, 2012, p. 242). The BRTI is also charged with creating and ensuring fair competition in the Indonesian telecommunication industry with both public and private participation. However, the independence of BRTI has already been questioned (Adiwiyo, 2004).

The BRTI was set up some 10 years after GSM licenses were first issued by the government. Working under the authority of the Minister of Transport and Telecommunication, BRTI comprises both the office of Director General of Posts and Telecommunication (DGPT) and Telecommunication Regulatory Committee.

The ITE was first drafted in 2003 under the initiative of the DGPT and the Department of Industry and Trade. The draft was then discussed with academics from *Padjadjaran* University, University of Indonesia, and Institute of Technology Bandung before it was delivered to the DPR (*Dewan Perwakilan Rakyat*, the House of Representatives) by President Yudhoyono in 2005. The ITE Bill was deliberated in DPR with the Minister of Communication and Information and the Minister of Law and Human Rights acting as government representatives. During the deliberation process in the DPR, Yudhoyono created a task force to undertake discussion of the ITE. After extensive deliberations carried out between 2006 and 2008, the ITE was finally enacted in March 2008 (Zulhuda, 2003).

In the context of this thesis, it is crucial to note that at no point during the ITE formation process was there broader participation from the Indonesian public. In fact, the closest the public came to any participation in the process was when the draft of the proposed law was discussed with academics from the three elite universities mentioned above.

No civil society organisations were consulted at all during the entire process from 2003 to 2008.

In Indonesia, the term civil society organisations (CSO) is used to denote the voluntary organisations frequently known as non-government organisations (NGOs) in the literature elsewhere. Its use and choice in this thesis reflects the history of such organisations in Indonesia, which began in the 1960s as NGOs funded by the state to support government policies in Indonesian national development. At the beginning of Suharto's New Order government (1966-1998), Indonesian NGOs embarked on a different pathway from their prominence as government' opposition, in response to changes in the economy and political landscape. In the early 1970s, there were many new NGOs established by intellectuals, student activists and religious leaders who committed their activities to community development such as *LP3ES* (Institute for Social and Economic Research), *LSP* (Development Studies Institute), *YLKI* (Indonesian Foundation of Consumers' Organisations), and *Sekretariat Bina Desa* (Village Development Secretariat). The growth of the educated middle class also enabled the government and NGOs to work as partners in economic development and poverty alleviation projects with the support of foreign aid. However, that spirit of co-operation did not carry through to political activities due to the restriction of political participation by the New Order government (Hadiwinata, 2003, p. 91).

In the lead-up to *Reformasi* in 1998, the relations between the state and NGOs became more challenging due to the more complex problems in the areas of human rights, economic exploitation, banning of weekly magazines, and repression of labour activists. Hadiwinata (2003, p. 98) argues that the decline of NGOs-government relations in 1990s was also due to the growing number of organisations deliberately challenging government policies and exposing government misconduct to the world. As *Reformasi* took place in 1998, the facilitation of a democratic transition becomes a possibility for Indonesian NGOs. If in the New Order era Indonesian NGOs were directly involved in building political awareness of society, after *Reformasi*, they needed to make an attempt to draw political and ideological boundaries within the existing groups in society; make an effort to develop a common political platform that would lead to the formation of collective action; and form networks and coalitions in society for building a strong civil society.

Hadiwinata (2003, p. 119) also argues that the end of the New Order government created a space for democratisation in Indonesian NGOs. NGOs' access to grassroots organisations via their endless pro-democracy campaigns and political education programs since the early 1990s and their commitment to empower the marginalised people contributed to the strengthening of Indonesian civil society and their ability to generate demand for a more accountable, clean and transparent government. At the same time, although democratisation in the post-Suharto era has opened a new opportunity for Indonesian NGOs, they still face challenges of maintaining the reform movement agenda and living up to the trust put in them by their beneficiaries, donors and government through enhancing their capacities in fighting internal corruption and fraud.

Since *Reformasi*, the term CSOs has been preferred in a deliberate attempt to indicate their freedom from government interest (and intervention) and funding and emphasise their role in empowering communities rather than supporting the government (Hadiwinata, 2008). In this thesis I take CSOs to represent the voice of the Indonesian public within policy making process. The voice of the Indonesian public can be generated from other forms such as public protest, people's opinions and thinking within articles in CSOs' publication. I chose to concentrate on specific CSOs to represent the voice of the Indonesian public within policy making process because of their contributions in accommodating public interest within the process. CSOs are also important for the Indonesian public as public watch of government's policy. Although general people as individuals can participate in policy making process, their participation is limited to the review process.

In the case of ITE initial formation process, there was a lack of CSOs' participation. From the literature research I conducted, there is not any literature found documenting CSOs' roles in the initial ITE formation process. CSOs' roles might likely be nil as the Indonesian government was an authoritarian regime at that time and the development of ICT in Indonesia was still in its infancy.

Given the overlapping areas of law, the government bodies involved and consequently the layers of governance that exist in Indonesia, detailing ICT policy development is complex and convoluted. Moreover, due to the large gaps between when and where an ICT policy is proposed and when it is implemented and revised in Indonesia

mentioned above, it is useful to employ a theoretical framework that allows analysis to be conducted at both micro and macro levels without losing coherence. For example, while the ITE was enacted at federal level, its implementation was carried out in villages through information utilisation programs by self-reliance communities assisted by CSOs such as *Medialink* in *Sidoarjo*, East Java and *Kebumen*, Central Java. At the same time while the ITE's shortcomings are felt at the micro level, for example, by Prita Mulyasari who was jailed three weeks for defamation under ITE's harsh regime simply for complaining on an email list about the medical treatment she received,² its revision can only take place at the macro level and in response not only to local but also international standards. For this reason, in this thesis I use Giddens' structuration theory as its duality of structure proposition allows for these very different yet inter-related practices and conditions to be taken into consideration. Giddens' structuration theory will be discussed later in Chapter 2 of the thesis.

Historical presidential stages in Indonesia

This section is about the historical context of changes in the forms of Indonesian political and government systems in Indonesia which spans from a period of before independence to the presidential era. In tracing that progression alongside the various leadership styles of past Presidents – from Sukarno and Suharto through to Habibie, Wahid, Megawati and Yudhoyono – the section seeks to understand how each successive administration has left its imprint on today's policy formation process. A brief discussion about the Indonesian presidential stages will be explained later in Chapter 3.

The main objective of the historical exploration carried out in this section is to identify the core actors as mentioned before as the government, big business and people, who were involved in the process of policy formation in Indonesia from the earliest days of nationhood and *Reformasi* to contemporary democracy. The turning point is the 1998 *Reformasi*, which is argued here to have had a profound impact on the growth of communication and civil society in Indonesia. There are also historical moments of the changing format and role of the Ministry of Information (formerly called

² <https://www.hrw.org/news/2010/05/03/indonesia-repeal-arcane-laws-criminalize-criticism>

'Kementerian Penerangan' under Suharto's regime, which was abolished during the President Wahid's era, then it was re-established by President Megawati under the name of 'Department of Communication and Information' (Depkominfo, 2001-2004), and later the word of 'Information' has been changed into 'Informatics' by President Yudhoyono (and has become Ministry of Communication and Informatics), and continues to President Joko Widodo. It is also important to note that the changing of the word 'information' to 'informatics' was intended to acknowledge the massive development of ICTs globally and the demand to develop, control, and regulate the Internet and digital systems and infrastructures in the country. The historical context is also an interpretation of Giddens' concept of time in this research, while Giddens' concept of space is interpreted as the Indonesian geographical conditions.

A period of before Indonesian independence commenced with the Dutch ruling for three and a half centuries from 1595. The Dutch were interested in spreading their Western ways of thinking and styles of government system like the cultivation system based on the structure of the traditional kingdoms by establishing a state apparatus or educated bureaucratic elites from the conversion of aristocratic elites to control society in Indonesia, formerly known as the East Indies (Jones, 2005, p. 40). As part of spreading the Western ways of thinking and the beginning of economic interests and humanitarian concerns in the twentieth century, the Dutch paid more attention to the education and social welfare of the native population especially the upper-class Indonesians by implementing the ethical policy. According to Uhlin (1997, p. 29), the ethical policy was the early liberalism introduced into the East Indies in the 20th century and unintentionally established as the base of Indonesian nationalism development because of the closer interaction with the Western ideas through education and civilization.

Towards 1900s, Indonesian youth involved in political organizations started the anti-colonial nationalist movements and struggles for independence from the Dutch administration. However, it was the Japanese who provided the greatest impetus for the Indonesian independence in 1945. Throughout this period, struggles for independence and the nation building were observed as Giddens' rules and resources (explained below) were used by the actors to produce social practices. The Indonesian

political leaders, youth and some educated individuals were communicating a message of independence and practices of a nation building.

Since Independence, Indonesia has undergone a variety of governmental systems that might be called versions of democracy. Starting with a Dutch-inspired parliamentary system of administration, Indonesia shifted into a guided democracy during the Sukarno era, was ruled by the authoritarian Suharto for 32 years from 1966, and since *Reformasi* in 1998 has been working towards a form of deliberative democracy. The embryo of democracy based on Western ideals born during the Sukarno period was suggested a pathway towards an age of authoritarianism under Suharto's *New Order*. The discourse of democracy applied within different periods of governments exemplified the rules and resources of Giddens' theory.

During the Suharto era, economic development was the government priority. It was under Suharto's administration, Indonesian economy developed and infrastructure improved. From 1969 to 1994 GDP (Gross Domestic Product) growth averaged 6.8 per cent and real GDP per capita increased more than threefold. Although the political system was dominantly authoritarian and the military was powerful as a political force, it cannot be neglected that during Suharto era the Indonesian middle class grew (Eklof, 1999, p. 3). The government's legitimacy rested on its success in achieving socio-political stability and economic development. According to Frederick and Worden (1993), Indonesia's politics in the 1990s were influenced by both domestic and international developments with non-traditional and secular values. These values had set Indonesian people as urban centred, nationalist, and more materialistically oriented.

Reformasi was not only a critical point in Indonesian political system and information movement, but also a major change in Indonesian economy. It marked transformation in Indonesian governments and the use of social capital. Under Habibie, Wahid and Megawati government, Indonesian economy tried to recover in the years after *Reformasi* along with the process of consolidating democracy. It was Habibie era which positioned major reforms and a transition of Indonesian political system, however, Indonesia under the Yudhoyono government reinforced Indonesian economy by creating a more supporting political environment and democratic society. improvements in governance are still crystallising, but democratic Indonesia has enjoyed much relative political stability and economic prosperity.

However, the transition process of democracy in Indonesia has been evaluated as limited and stagnant due to several constraints and challenges. As Mietzner (2012) argues, the attempts of anti-reformist elites to return to the era before *Reformasi* and the resilient civil society because of a lack of support from the international aid, have stagnated the process of democracy. Hamayotsu (2013) concurs but argues that the process of Indonesian democracy is thwarted by the limited freedom of media and religious intolerance.

Additionally, Indonesia still has to tackle major problems of corruption, military abuses, Islamic radicalism and abuses of minority rights (Freedman & Tiburzi, 2012). Davidson (2009) and Abdulbaki (2008) argue, the weaknesses of law and a limited government capability have also impacted on socio-economic conflicts and political instability throughout the years after *Reformasi*. McRae (2013, p. 292) also adds, corruption scandals and an ineffective coalition government have characterised Yudhoyono second term of government. As Ito (2011) argues, the decentralization process brought about by *Reformasi* in Indonesia has failed so the transition process of democracy in Indonesia is yet to be consolidated.

Aside from historical changes in Indonesian government systems, Indonesian culture and social diversity might be rooted from their complex interactions with the physical environment. Indonesian geographic conditions have created major challenges for Suharto government to develop telecommunication infrastructure both physically and financially. To resolve these problems, the Indonesian government made an effort such as implementing the Five Year Development Planning (*Repelita*) since Sukarno era in 1956 and establishing a domestic satellite system, *Palapa* in 1976 under Suharto administration. To support the state development programs, a private financial resource was essential during Suharto government.

Besides having a large population and densely-populated regions, this Muslim majority country has an economic planning process which follows a 20-year development plan, spanning from 2005 to 2025. It is segmented into 5-year medium-term plans, called the RPJMN (medium-term plans), each with different development priorities. The current RPJMN – the third phase of the long-term plan – runs from 2015 to 2020, focusing on infrastructure development and improving social assistance programs in education and healthcare. Such shifts in public spending has been enabled

by a reform of long-standing energy subsidies, allowing for more investments in programs that directly impact the poor and near-poor, as well as vast improvements in infrastructure investment (Worldbank, April 2016).

In terms of policy development in the Indonesian telecommunication sector, a Telecommunication Act was enacted in 1989 which was revised 10 years later in 1999 (Ministry of Communication and Information, 2011) (this development will be explained in chapter 3). The 1999 Telecommunication Act is still used by the Indonesian government in the present time to regulate telecommunication infrastructure and practice. The policy formation process of Indonesian telecommunication and ICT will be investigated later in chapter 4 of this thesis. Meanwhile, the next chapter will discuss about Gidden's structuration theory as the theoretical framework of this thesis and the research methods.

Chapter 2. Theoretical Framework and Research Methods

Introduction

The objective of this chapter is to explain and qualify Giddens' structuration theory as the theoretical framework of the thesis. Working with Giddens theory, this chapter explains the textual and historical analysis of ITE policy and analysis of ITE description process in Indonesia. This chapter also introduces actors broadly and explain interviews as one of the method used within the research. How the interviews were undertaken, for what purpose, who the informants were and why they were chosen will be explained.

Structuration theory comes from the field of sociology and is based on Giddens' understanding of society and social actors within a complex structure which functions both as resources and actions. The crux of structuration theory lies in how Giddens seeks to reconcile the tensions and the relations between micro-level social practices and macro-level forces such as social structure. As Allan explains, for Giddens (Giddens, cited in Allan, 2011, p. 252):

society does not exist as objective structure; rather, it is continually built or structured by reflexive social actors or people....It happens when people use specific modalities to produce both structure (rules and resources) and practice.

Using structuration theory as a framework here makes it possible to understand the interactions of consultation, enactment and review that take place around the formation of a policy such as ITE to be social practices. Social practices in this instance refer to the actions (consultation, enactment, implementation, and revision) initiated and taken by the actors that are exercised recursively and reflexively to form structures. Rather than vacillate between agents and actors, I use the one term, actor, to denote the three parties i.e. CSOs, big business and government. As the ITE is a national policy, in most cases, government here refers to the national (the Ministry of Communication and Informatics) rather than provincial and other levels governments that exist in Indonesia. Big business in this thesis refers to the two prominent and major

telecommunication companies in Indonesia: *PT Telkom* and *PT Indosat*. *PT Telkom* is the only national (state-owned) telecommunication company, with its subsidiary mobile operator: *PT Telkomsel*. *PT Indosat* was privatised in 2003, and later owned by a foreign (Qatar) telecom company, i.e. *Ooredoo Asia Telecommunication Pty*. *Ooredoo Asia* holds 65% of shares and the Indonesian government holds less than 15% of shares. A brief explanation of major telecommunication companies will be described in more detail in Chapter 3. I focus on three CSOs: *ICTwatch*, *Satudunia* and *Medialink* as they have been involved with ITE enactment, implementation and revision since 2010.

In the sections that follow I discuss structuration theory as conceived by Anthony Giddens and explain the suitability of its use here as a framework for the analysis of the ITE policy development in Indonesia. There are other possible theories that can be applied such as Castells' *Network Society* (1996) and Latour's Actor-Network Theory (ANT) (2005) to explain the process of technological development and social changes in Indonesian society. However, these two theories differ significantly from the approach I take here in their emphasis on the influence of technology towards society and social practices.

For example, Castells' notion of a network society is explained predominantly through his trilogy on his concept of *The Information Age*, which describes the shift from an industrial society to an informational society from the 1970s. Rather than human actors, Castells' network society is designed around networks and his concern is with the flow of information through technology. For Castells the interrelationship of social, economic, political features of society, and technological innovation as emergent from the network is the essential feature of the twentieth century (2000a).

The network society, according to Castells (2000b, pp. 5-6), is "a specific form of social structure tentatively identified by empirical research as being characteristic of the Information Age". Castells views humans' interactions as full of meaning and framed by their experiences, culture and relationships with others. Their interactions are exercised and organised to create structures within a society, which is in this case through networks that are predominantly technical in nature. This social structure then produces human actions to form a network of interactions.

Castells' theory of network society might explain the concept of information and communication technology (ICT) and its influence in a society in this thesis, however, the focus of this study is how people interact with each other to create certain patterns of social practices guided by a context of regulation. Therefore the emphasis placed on the organising concept of a network of interactions established and facilitated by ICT, which is Castells' emphasis, does not align with the objective of this study.

ANT is a methodological approach to social theory that explores the relations within a network of human and non-human entities. It originates from science technology studies and was developed in the 1980s by Bruno Latour, Michel Callon, and John Law. Its main conceptual breakthrough is its inclusion of materials or nonhumans as actors in social systems or networks (Latour, 2005). Dankert (2012, p. 46) summarises the approach as the establishment of connections and reconnections between human and non-human entities which can lead to the creation of new entities that do not necessarily practice the sum of characteristics of the constituent entities. More so than Castells' network society, ANT views technology as exercising independent agency (Latour, 2005). ANT makes no analytical distinction between humans and non-humans for the purposes of understanding agency or action and simply treats them as actors or actant (Latour, 1990, p. 129). As such, ANT's definition of all entities as actors is not compatible with the approach taken in this thesis where only humans and their institutions are considered actors capable of producing actions.

In addition, although ANT also studies the relations between actors, generally speaking in ANT social system and technology are inseparable. According to Elbanna (2011, pp. 136-137), Latour treats society in his theory as a heterogeneous network constructed of materials such as the agents, texts, devices, architectures, which link together and formulate themselves to reproduce a sociotechnical interaction within institutions of social systems. This certainly does not align with structuration theory and my own views of society as consisting of repeated human social activities practiced in individual's routines differently or similarly through time and space.

Structuration theory

As Giddens (1984, p. 2) says "the basic domain of study of the social sciences, according to the theory of structuration, is neither the experience of the individual

actor, nor the existence of any form of societal totality, but social practices ordered across space and time”. Hence, structuration theory is a social theory that gives the most attention to social practice within society. The theory has three main elements: structures, agents and the duality of structure. Giddens (1982, pp. 8-10) understands structuration to be the structuring of social relations across time and space and sees the reproduction of social systems as an active process of the actors’ performances. Thompson explains Giddens’ structuration theory as the “creation and reproduction of social practices bound by spatial and periodic structures, based on the analysis of structures and agents, wherein neither is more important than the other” (Thompson, 1989, p. 56).

The formulation of structuration theory is based on Giddens’ observations on how people conduct their activities daily in social life. Individuals learn what actions are right and acceptable within any given society by watching what others do. If they think that certain actions are right, they will continue to carry on the actions. If they do not agree with an action, they can carry out a protest or perform a contrary or different act. It is through the repetition, adjustment and routine of actions and reactions as described above that certain norms, rules and structures appear to become features of a society (Allan, 2011, p. 252). These features are originated from the individual’s routines patterned in the same ways or differently through time and space (Giddens, 1984, p. 3). Together they form the feedback loop that is essential within this thesis’ focus on the interaction between actors who produce certain practices using their knowledge and resources in certain structure. These practises may or may not be repeated to form certain mechanism of interactions. They depend on actors’ responses towards certain norms and rules in a society through time and space. A new or revised structure will emerge as actions are adjusted and exercised regularly by actors and accepted by society.

Structure and structuration

From Giddens’ perspective, one of the features of society produced after an action is performed is the structure. Since individuals who perform actions are human beings subject to change and not always constant, the same can be said of the structure their actions form. According to Giddens (1984, p. 17), “structures in social analysis refer to recursively organized sets of rules and resources which are both medium and

outcome of social practices”. Giddens’ definition of structures can be explained using an example of the family. Family itself is a system of interactions within a society. The concept of a family in general can be applied when there is more than one person in a relationship, although nowadays it is a very complex concept. Within a family concept, there are many kinds of structures given within the relationship and interactions among the individuals involved such as the interactions between spouses, siblings and parent-child. In relation to Giddens’ definition of structures, the rehearsed and institutionalized activities and relationships among the actors shape, link and facilitate systems and regenerate other actions which themselves depend on particular norms in society.

Similarly, Allan (2011, p. 253-254) explains, it is when individuals make use of certain norms, rules, and material goods within their social practices that the structure then comes into existence. The norms, rules and material goods are seen as individuals’ assets that enable social practices in presence. Giddens names these properties in his theory as rules and resources and he views them as the properties that enable and constrain individuals to perform actions.

Cohen (Cohen, 1989, pp. 214-215): points out that Giddens acknowledges that constraints and enablement are complementary and in doing so

[s]tructuration theory underscores the insight ignored in exclusively negative definitions of constraint, that no matter how severe constraints may be they always establish opportunities for some more or less extensive range of activities which enables actors to intervene in social life.

In the context of this thesis this is an important point as there are many constraints such as geographical challenges, infrastructural issues and literacy limits in Indonesia that have created opportunities for actors such as CSOs to intervene in social life. I return to these in further detail in Chapter 4 but one example of such enablement would be the media literacy program such as *Internet Safety* that *ICTwatch* put in place to ensure novice internet users are not caught up in defamation and blasphemy, which are considered illegal under the current ITE.

Giddens (1984, p. 17) treats structure as rules and resources, not as an isolated set of properties. He further breaks rules down into two categories: normative rules and codes of signification. Normative rules are rules that govern behaviour, while codes of signification refer to rules in which meaning is produced. Giddens' account of rules refers to the modes of transformative relations integrated into a rehearsed set of social practices which express forms of domination and power.

Normative rules are of great relevance here because in many instances, the ITE was written with the intention of regulating online behaviour in Indonesia. For example, in Chapter VII it has no less than 11 Articles (27-37) that list "Prohibited Acts" (Wiryawan, Djafar, & Santoso, 2011). These range from acts of impropriety and provision of false information in electronic transactions to dissemination of information aimed at spreading hatred and dissension based on ethnicity and religion. However, the attempt at regulating online behaviour has failed at least in part because much of the policy is very broadly framed and vaguely worded leaving Indonesian Internet users open to extremely harsh "penal provisions" for minor offences. The six years' imprisonment for defamation, for example, or the choice of a fine of up to one billion rupiah is a prime example (Anggara, Eddyono, & Napitupulu, 2015, pp. 15-16).

Perhaps in the years before *Reformasi* under the Suharto administration, such normative rules might have been acceptable and enforced by the strong arm of the law. However, by and large Indonesian society has undergone so much change in what is close to two decades since *Reformasi* that the desire for freedom of expression is now understood as a basic right of all citizens and not to be easily given up or trifled with. It is this change in social and political attitudes, what Giddens might term as structures, that has created a corresponding alteration in the social practices surrounding the process of ICT policy formation in Indonesia.

Haugaard (1992, p. 80), similarly describes a rule as a structural format stored in individual memory. Actions are produced by articulating individuals' knowledge. This knowledge is stored in an individual's memory and works as a rule for the individual to perform and repeat actions. These actions then are saved practically in the individual's awareness. People acquire the knowledge through the process of reflexivity by observing other people's activities and questioning whether their actions

correspond to the knowledge they have. Then the knowledge is transformed into actions. This process is exercised many times in people's activities and social life. Within this definition of a rule, it can be said that structure depends on agents' memory traces or knowledgeability to exist and through the process of reflexivity, rules are both learned and preserved.

The concept of resources in Giddens' theory of structuration is fundamental because resources provide individuals with dual capabilities, namely allocative and authoritative resources (Giddens, 1984, p. 258). These resources establish a structure of domination and facilitate individuals as agents to generate different types of power within kinds of society. I will return later to a discussion on the structure of domination, kinds of resources and types of power later in the section of the application of structuration theory in the Indonesian ICT policy context.

The duality of structure

According to Giddens, society is made up of the interactions of practices that are produced and reproduced by individuals. Since human practices are complex and dynamic, Giddens uses the concept of the duality of structure to explain the relationship between the individuals and structures within a society. It refers to the structural properties of social systems; the "conditions and consequences" of actions implicated in its production and reproduction (Giddens, 1982, pp. 36-37). The duality of structure occurs in a recurrent process when individuals use certain tools and their knowledge to act and interact with others to form structures and reproduce actions as the medium of social practices. The structures become the outcome of social practices when norms and rules carried out in actions are exercised within society.

The duality of structure distinguishes Giddens' theory from other social theories because it resolves the concept of dualism – a recurrent process of individual actions draws out the structure as the medium, then confirming, reaffirming and reinforcing an existing structure as the outcome. Although Giddens' concept of the duality of structure was relatively innovative when first theorised during the 1970s and introduced in *New Rules of Sociological Method: a Positive Critique of Interpretative Sociologies*, the big challenges lie in how better social structures can be built and how more effective agency can be deployed.

This, in a sense, is also the central question at the bottom of this thesis: how can better ICT Policy be built in Indonesia and whose agency needs to be deployed more effectively for this to be the practice? The analysis of the ITE Policy formation process here seeks to lay bare the various actors involved but it aims also to understand how flaws can be addressed and revised effectively to strengthen such policies. As Cohen (1989, p. 200) put it: “if systems are patterned and regulated through series and cycles of practices and relations articulated across time and space, what quality of systems remains to be addressed?”

The following section will discuss Giddens’ concept of agents and agency to introduce the idea of individuals and their functions within structures.

Agents and Agency

Giddens (1984, pp. 5-6) uses the term, agents to denote groups or individuals who draw upon structures to perform social actions through embedded memory or memory traces. As mentioned earlier, in this thesis I use the term, actors rather than agents. Memory traces, according to Giddens are the knowledgeability of the agents, i.e. what agents know about what they do and why they do it. The reflexive agents then create social practices through recursive activities, monitor their actions reflexively and rationalize their actions based on their motivation (Giddens, 1984, p. 377).

The reflexive monitoring of action, rationalization of action, and motivation of action are important aspects of social interactions. When individuals interact with each other, they observe each other’s behaviours, pay attention to the flow of conversation and monitor their actions. At the same time, they have to provide reasons for what they do or rationalize their actions in interactions with others. Giddens discusses the ‘rationalization of action’ within the concept of consciousness (Allan, 2011, p. 257) and divides it into discursive and practical consciousness. Discursive consciousness is the ability to express our reason for our actions within social situation. Practical consciousness is the knowledge of how to go on in social life. Both discursive and practical consciousness are critical to social interactions as they impact actors’ ability to perform social practices in the presence of other human beings. It is possible here to understand digital media literacy, as defined in this thesis, as part of practical consciousness as it enables actors to understand how to do things and behave in online social life.

Action, by Giddens' reckoning, "is a consciously intentional 'doing' which has the unintentional effect of reproducing structure", (Giddens, cited in Haugaard 1992, p. 75). Moreover, action should be conceived as a continuous flow of interventions in the world that are initiated by autonomous actors. The individual actor has been Giddens' focus for analysing action using the model of what he calls the stratification model of action. According to this model, Giddens views actions as performed by the actors, limited by unacknowledged conditions of action and unintended consequences of action (Thompson, 1989, p. 58-59). In other words, the structuration model describes how individual actors continuously monitor the flow of their activities.

Giddens (1984, p. 9) sees agency as the "capacity to make a difference, also known as 'transformative capacity', i.e. with the power to intervene or to refrain from intervention, which is closely connected with power". Agency does not refer to "the intentions people have in doing things, but to their capability of doing those things in the first place". To act is to exert power. "To be able to 'act otherwise' means being able to intervene in the world or to refrain from such intervention, with the effect of influencing a specific process or state of affairs" (Giddens, 1984, p. 14). So, actors perform practices (actions) using their capabilities (agency) by making use of certain rules and resources to intervene in structures within society. Performing practices also brings possibilities and opportunities of change and modification.

Structuration Theory in the Indonesian ICT policy context

An examination of the Indonesian ICT policy development process cannot be done without looking at the changes in Indonesian government and politics. In the context of this thesis, the post-*Reformasi* period or the period after Suharto regime of authoritarianism ended is the most crucial and relevant. This period – extending from the 1998 to 2004 – was one where the development of democracy in Indonesia was extraordinarily productive as spaces of public discourse about changing and new political conditions multiplied online. *Reformasi* itself, which took place in 1998, marked a turning point in governance in Indonesia as it ushered in a democratic system. According to Nurhadryani, Maslow and Yamamoto (2009, p. 217), the Internet played a major role in facilitating the flow of information and mobilisation of protests through the online political discussions that took place around the economic crisis in 1997. As such, it was the coming together of accumulated political dissatisfaction with

a new means of circulating mass dissent and its expression in protests, which led ultimately to the collapse of the Suharto regime in 1998. Lim (2006b, p. 96) also relates how the Internet has provided independent spaces for and an important means of political discussion leading to the social mobilization of an early Indonesian civil society.

In the post-*Reformasi* period, the Indonesian people, many of whom were student-activists, academics and journalists, became much more involved and vocal in the political process than they were during Suharto's New Order era. They actively searched for more information about politics, formed and joined political parties, and contributed to the development of public opinion on the Indonesian government's conduct and other state-related matters (Hill & Sen, 2005, p. 66). Hence, although the Internet was introduced into Indonesia earlier in 1983 by the UINET (University of Indonesia Network) (Parapak, 1994, p. 66), the growth of democracy in Indonesia is not easily disentangled from the role of information and communication technologies (ICT). In fact, according to Lim (2006), the booming of Internet outlets known as *warnet* in 1996 were a major breakthrough in political accessibility for Indonesian. For the many Indonesians not yet able to afford personal computers at home then, "accessing the Internet from *warnet* [was] a direct form of social engagement" which created 'free space[s]' where common people meet and discuss about daily life and politics without government supervision" (2006b, p. 95). Similarly, Hill and Sen (2005, p. 63) argue that the spread of *warnet* spreading fast from Java and Bali through to Sumatra, and Sulawesi between 1996 and 2000, helped drag the public into a cyber-community.

Alongside the political and social changes of the post-*Reformasi* period were changes wrought in the field of Indonesian telecommunication management, which culminated in September 2000 with the implementation of the Telecommunication Law (1999) (<https://jdih.kominfo.go.id/>). Before this law's enactment, Indonesian telecommunication services were administered by a monopoly. The state played the dominant role acting as both regulator and operator. Based on the Law of Telecommunication (Law No 3/1989) (<https://jdih.kominfo.go.id/>) current then, only BUMN (state-owned enterprises) were given licences to manage basic telecommunication service in Indonesia. The two companies licensed were PT

Telekomunikasi Indonesia Tbk (*Telkom*) and PT Indonesia Satellite Corporation Tbk (*Indosat*). Any national or international private companies who wanted to be involved even in the most basic provision of telecommunication services in Indonesian had to incorporate *Telkom* or *Indosat* (Budhijanto, 2010, pp. 37-38). The state-mandated duopoly resulted in many benefits for the two companies. However, it also resulted in poor consumer-oriented service and a '*take it or leave it*' attitude in the telecommunication service industry (Lee & Findlay, 2005, p. 340). This remained the status quo for 10 years until the new Telecommunication Law (1999) enacted in 2000 came into effect.

While the technological, social and cultural developments that led up to the *Reformasi* and events that followed immediately afterwards remain of great significance, relatively lesser attention has been paid by commentators to the telecommunication policy changes that accompanied and continue to flow on from that important epoch. This thesis seeks to address the gap using Giddens' structuration theory to understand the interplay between government, big business and civil society (the latter in the form of CSOs).

The Telecommunication Law (1999) was prompted by the arrival of an era of global competition and deregulated private participation in telecommunication industry through public-private partnership programs. It was based on an anti-monopoly principle and designed to create a space for competitive practices and an orientation towards consumer interest and telecommunication users. The new Act was an attempt by the Indonesian government to reform the national telecommunication system in accordance with the development of global technologies and the convergence between information and broadcast technologies. It reinforced the liberalisation of the Indonesian telecommunication industry from the duopoly of *Telkom* and *Indosat* detailed above to one supported by a pro-competitive regulatory system (Lee & Findlay, 2005, p. 341). Both state-owned enterprises *Telkom* and *Indosat* were eventually privatised in the 1990s (Lee & Findlay, 2005, p. 345) and in this thesis, taken to be the big business actors in the structure of the ITE Policy.

Under the Indonesian legal system, the Telecommunication Act outlines only the basic principles, and authorises detailed implementation measures that were to be determined by the designated ministry (the Ministry of Communications) through

governmental, ministerial and DGPT administrative decrees, depending on the nature of the subject.

As the use of ICT and the Internet in business practice and information activity increased throughout 2000s, it became apparent that there was an urgent need to manage this system with a more specific regulation because the extant Law of Telecommunication (1999) was not equal to the task. ITE was drafted in 2003 to address the gap in the regulations and since 2008, served as the Indonesian cyber law until today (Maskun & Khairunnisa, 2016, p. 140).

The ITE and its rollout between 2008 and 2015 is the subject of study for this thesis. The rationale for focussing attention on this policy specifically is to understand the role that the interactions, discussions and exchanges between the government (the Ministry of Communication and Information), three specific CSOs (*Medialink*, *ICTwatch* and *Satudunia*) and big business (*Telkom* and *Indosat*) play in the process of ICT Policy formation. In doing so I will follow its trajectory from when it was enacted during President Yudhoyono's term and the issues that have led to its revision under President Widodo's administration.

Giddens' structuration theory functions as the lens to view the interactions and contestations between the government, CSOs and big business within the structure of the Indonesian ICT policy development. It also serves as the holistic framework for examining how the legislative process of the Indonesian ICT policy unfolded after the enactment of ITE in 2008.

In applying structuration theory to the Indonesian ICT policy, the legislative system of policy formation process is likened to rules that through their hold on power and facilities, dominate the structure of Indonesian telecommunication system. ITE and related ministerial regulations are both the rules and resources at the same time. The legislation process then serves as the form of communication that manages the interactions among the actors within the structures. Actors' knowledge and their ICT abilities together with the established networks of CSOs are forms of resources that link structures, actors and social practices.

As Giddens (2003, pp. 455-456) puts it:

[a]ll social interaction involves the use of power, as a necessary implication of the logical connection between human action and transformative capacity. The stocks of knowledge drawn upon by actors in the production and reproduction of interaction are at the same time the source of accounts they may supply for the purposes, reasons and motives of their action.

Understanding a society as being made up of interactions and contestations of actors, structures and duality of structure within the Indonesian ICT policy development requires a multi-layered examination on the formation, confirmation, reinforcement and transformation of social practices. This thesis attempts to contribute to the understanding by investigating those interplays within the period after ITE enactment from 2008 to 2016.

The two former state-owned enterprises, *PT Telkom* and *PT Indosat* represent big business in this thesis. As the two firms that formed the duopoly under the previous ICT policy, they continue to play important roles in the telecommunication services development in the country albeit from the reduced position of two private operators among many others. Finally, although there would be few government departments that have nothing to do with telecommunications today, in Indonesia it is the Ministry of Communications and Informatics that oversees its day-to-day operations. As such, it rightly stands as the government actor in this thesis. In aggregate, all three groups – government, CSOs and big business – are deemed actors, after Giddens' structuration theory.

Since the *Reformasi* era, online activism and activists have gained even greater momentum and prominence. The Internet also played a significant role in overall civil society development in Indonesia (Lim, 2003b, 2005; Nugroho, 2008). In fact, according to Lim, the proliferation of Internet cafes during the end of the 1990s and discussions surrounding the monetary catastrophe in Indonesia fostered much of civil society's call for a change in regime change in 1998 (Lim, 2007, p. 221). Hill and Sen (2000, 2005) argue that the Internet has been an important factor in the political development of Indonesia's nascent democracy because it has facilitated the involvement of ordinary Indonesians in policy making at the local and national level.

In the context of social and political change, Internet use by Indonesian CSOs has certainly played a historical role. During the authoritarianism of the New Order, it provided social movements with alternative sources of information, which were very important for building the pro-democracy coalition. For example, a free Internet mailing list known as *Apakabar* or INDONESIA-L moderated and contributed by John MacDougall in USA, which emerged during 1990s, was popular as a crucial source of uncensored domestic and global information (Hill & Sen, 1997, p. 75). *Apakabar*, together with the popular *warnet* (internet kiosk) were used to distribute alternative information about government programs and politicians' practices in 1996 and to support the creation of open and democratic debate and the rise of civil society in Indonesia (Lim, 2002, p. 387).

With regards to the concerns of the CSOs, after the toppling of the Suharto regime was achieved, solidarity became less of an objective for CSOs. The divisions between them became clearer as they each pursued different missions (Hadiwinata, 2003). Since then, the diversity of advocacy groups and civil society organizations has flourished all over Indonesia. According to Nugroho (2008, pp. 10-12), 92 percent of Indonesian CSOs have used the Internet to achieve their stated organisational goals and missions. For example, the use of the Internet has also influenced the way environmental CSOs work on forest protection in Indonesia. Research conducted by Kurniawan & Rye (2013); Rosyadi, Birner & Zelelr (2005); and Santoso (1999) suggest the Internet to be an important tool for fulfilling various purposes in environmental activism efforts. The use of the Internet has also been crucial to the CSO networks' regional and global expansion. Such international partnerships are of benefit to Indonesian civil society, lending bargaining power in legislative processes.

No CSOs were involved in the ITE policy formation process from 2003 to 2008, leaving the consulted academics from the three elite universities as the sole parties concerned with the interests of the public. However, since its enactment in 2008, CSOs have been crucial to implementing, documenting and reviewing the ITE's rollout (Wiryawan et al., 2011). CSOs have also played an important role in discussions and lobbying the government to revise the ITE policy (Eddyono, Anggara, & Napitupulu, January 2016). I will explain this matter further in Chapter 6.

Research methods

To illustrate, I have chosen to focus on three specific CSOs as instances of civil society in action. The three CSOs were chosen because they are the main organisations actively involved in the development of ICT policy in Indonesia, especially policies that regulate the Internet, over a minimum of four years. The variety in their scope of activities mean they also serve Indonesian society at different levels. *Satudunia*, for example, works at the national level, although it is linked to the global network, *Oneworld* whereas *ICTwatch* is a member of the regional hub for Internet governance, *CitizenLab*. Since 2002 *ICTwatch* has devoted itself to enabling and running *Internet safety*, *Internet rights* and *Internet governance* campaigns. Its current project is concerned with advocacy in the area of *Internet governance*. Meanwhile, *Medialink* operates at the local level and only in certain provinces in Indonesia. At present, *Medialink* activities are concentrated in Central Java, East Java and Ambon. Considering the multi-layered complexity with which ITE plays out in Indonesia, it was necessary to examine CSOs that operate at different levels of society.

The three CSOs also share the similarity of using websites (<http://ictwatch.id/>, <http://medialink.or.id/>, <http://www.satudunia.net/>) as their main avenue for advocacy and dissemination of information to the public. All operate with the principle of open data and sharing, so there are some overlaps in the programs they run for ICT skills development. Their goals are also broadly similar, i.e., to enhance ICT as strategic tools for a better democracy.

In 2015, I conducted interviews with several key personnel at the three CSOs: *ICTwatch*, *Satudunia*, and *Medialink* in search of some first-hand knowledge on their organisations' interactions and roles in the ITE policy review and revision process. The key personnel were identified by their experience and knowledge of ITE issues and their positions in the organisations they work. For example, people who arranged ITE campaigns and people who managed training classes for activists whose concerns was ITE revision process. I used a pseudonym to mention the key personnel in this thesis. Pseudonyms have been used to protect the confidentiality of the information shared during the interviews. For example, Agus from *Satudunia*, who has been organising regular discussions, talks and workshops to strengthen a knowledgeable civil society organisations in Indonesia. He has also facilitated writing classes and

journalistic trainings for activists and teachers to share information and write news about ITE and its revision process in mass media. The interviews were conducted in Indonesian as the language of conversation in order to yield more natural information. Unless otherwise stated, all translation and transcription work was completed by a professional transcriber. The semi-structured interviews conducted 2-4 times with the same key persons and took place in informal settings and, as such, varied in length with the longest occurring over 90 minutes and the shortest running to just over 30 minutes.

Examination of all three CSOs' off and online publications, bulletins and reports, particularly those related to ITE was also undertaken. I also examine government publications, bulletins and reports, specifically from the Indonesian Ministry of Communication and Information which range from the year 2008 until 2016. Those documents were selected by using keywords of ITE formulation, implementation, its revision process and infringements. This information is then analysed according to the objectives of this research and Giddens' theory of structuration as the theoretical framework, using a thematic analysis, which is one of the most common forms of analysis in qualitative research. A thematic analysis emphasizes pinpointing, examining and recording patterns or themes within data (Braun & Clarke, 2006). Themes are patterns across data sets that are important to the description of a phenomenon and are associated to a specific research question.

I also use this information as examples to explain the process of ICT policy development in Indonesia by looking at a case study of ITE, practices conducted and contested by actors involved in the process, such as government, big business and civil society organisations. A detailed discussion of CSOs' roles in ITE implementation and review will be explained in chapter 5.

Conclusion

I contend that the strength of Giddens' framework lies in the duality of structure that explains how social practices at micro-level can and do, affect macro-level structures. While structures such as the ICT policy facilitate, and in some cases, proscribe Indonesians' use of the Internet from day-to-day, what Indonesians do on and with the Internet, in other words their media and social practices, feed back into the structures.

The urge to legislate on what kinds of media content can be legally accessed, for example, is an outcome of this feedback loop. It is in this manner that the ICT policy and system is both medium and outcome (Giddens, 1984). It is where what some might deem deviant social practices take place and also the result of what is shaped by their social practices and their repercussions. The point is, the structure though formed remains malleable.

The theorisation of this dynamism is key to this thesis because the ICT policy system in Indonesia is still in its infancy and there are still millions of Indonesians yet to take to the Internet, making the structure highly subject to multiple modifications. Sometimes responses to the need for change can occur very quickly as it did with the legality of motorcycle ride-on-demand mobile phone app, *Go-Jek*, when President Widodo personally intervened to overturn its banning in 2015 ("Go-Jek praises Jokowi for withdrawing ban," December 18, 2015, p. 18). Other times, as with the gap between the 1999 Telecommunication Law and the 2008 ITE, change takes many years of negotiation. There are many reasons for this state of affairs and I discuss the background to this in Chapter 3 and 4.

Chapter 3. Pivotal connection between political history and presidential stages and the role of Internet in Indonesia

Introduction

The main objective of this chapter is to trace the intrinsic connection between the Internet and democracy in Indonesia. To do this I look back into the historical development of the Internet in Indonesia and the development of new political space in the lead up to *Reformasi* (reform) and afterwards.

The 1998 *Reformasi* is a pivotal point in this chapter as it has had a profound impact on communication, civil society and democracy in Indonesia. The existence of such democratic space in *Reformasi*, helped by the Internet in Indonesia, can be observed in various aspects such as how people express themselves within the system of government, how people gather to discuss government's policy and empower themselves through information, and how people express their opinions and disagreement about their government's conduct. This chapter also provides a context for understanding changes in the ways Indonesian people communicate, express their opinions, and empower themselves as the effect of democratising influences of the internet.

I divide the periods leading to the internet's development in Indonesia into three main parts: 1980s; 1994-1997 and 1998 onwards. Throughout these sections I explain why, aside from the government, the two other main actors in the structure of ICT policy formation process in Indonesia today are the CSOs and big business.

Indonesia had been known as an authoritarian country during Suharto's New Order regime from 1966 to 1998. As computer technology developed during the 1980s into Information and Communication Technology (ICT) and the internet, an alternative source of information and communication between people emerged that contested the traditional mass media place as the primary source of information on government activities. Regulatory space for the authoritarian regime then became limited, and was

supplemented by a space for more democratic practices and expression. A more detailed explanation will be further discussed within the last section of this chapter.

The condition described above changed slightly when the internet arrived in Indonesia in the 1980s. Although adopted limitedly by some elites and individuals, the internet provided an alternative way of communication and sharing information that, unlike traditional broadcast and print media, was not controlled by the Suharto regime. The initial opening of access to information and communication really took off when the Internet became commercially available in 1994 (Hill & Sen, 1997).

The booming of online discussions during New Order regime was influenced by a political context, in particular elite conflicts, and the strength of civil society. According to Liu (2011, p. 33), Internet space in Indonesia especially during New Order regime was seen as a successful example of democratic space. This is due to the government's inability to control the Internet, so that the internet space and practice developed in an independent, vibrant, and professional ways. And a strong connection between online and offline contentious politics also affected Indonesian internet space. Despite the new order's authoritarian regime and control over the traditional media, the introduction of the internet opened up a space outside of this regulatory context and enabled more open and democratic expression to be voiced.

According to Giddens (1984, p. 3) time and space, are ontological categories that frame human actions and experience. Accordingly, in this chapter the historical tracing of Internet development in Indonesia alongside the response of Indonesian government towards the Internet helps to explain how internet has been used so far by Indonesian.

The right to gather, discuss and express opinions for Indonesians has been granted in the 1945 National Constitution, Article 28E (https://portal.mahkamahkonstitusi.go.id/eLaw/mg58ufsc89hrsg/UUD_1945_Perubahan.pdf). The Article guarantees that every Indonesian can speak their voice and discuss it with others together formal and informally. So, the democratic value and its constitutional guideline have been known in Indonesia far before the New Order. However, the democratic value contrasted with the authoritarian style of the New Order regime, which Suharto imposed from 1966 to 1998. Uniformity was implemented by the New Order regime to create national stability to support economic

development. Disagreement with the government was not expected and would not be tolerated (Lim, 2006a).

Meanwhile, the relationship between the Indonesian government and its people became worse when Asian financial crisis hit Indonesia from 1996 to 1997. Even before the crisis, Indonesian people were dissatisfied with government because of widespread corruption, collusion and nepotism within the Suharto government (Eklof, 1999, p. 102). The Asian financial crisis was the external factor that worsened Indonesian economy and social conditions. This led eventually to the stepping down of Suharto from office in 1998 after a massive demonstration against Suharto by students in front of the legislative house building in Jakarta on 21 May 1998.

After the resignation of Suharto, Indonesia went through what later came to be known as *Reformasi*, a transition period during which bureaucratic reform took place. Some important changes of this period can be said to have been the revision of five political laws on elections, parliament, political parties, social organizations and referenda (Lanti, 2010, p.17). Under the leadership of former Vice-President Habibie, these revisions led to a boom in the number of new political parties formed and signalled the end of authoritarian rule.

The *keterbukaan* (open space) years marked the beginning of the replacement of the authoritarian New Order coalition with a new cross-class democratic alliance. According to Aspinall,

This was reflected both in the invigoration of middle-class political opposition, by signs of unrest in the lower classes, and by attempts to establish new forms of cross-class political cooperation. The new political assertiveness of the middle class was reflected in greater press boldness in response to the largely middle-class readership, the growing range of voluntary associations, and the greater vigour of liberal political ideas in intellectual circles (Aspinall, 2005, p. 261).

Suharto's departure saw Habibie come into office from May 1998 until October 1999. Under Habibie's administration as a reformist leader and modernist Moslem, many actions and decisions were taken up as symbolic of new-found freedoms. For example, Habibie repealed the *SIUPP* (press licensing system) that had shackled the freedom of

the press, released political prisoners jailed during Suharto era, laid the foundation of military reform and supported an independence for East Timor (Liddle, 1999, p. 37).

The end of the New Order government, therefore, also created a space for democratisation in Indonesian NGOs (Hadiwinata, 2003, p. 119). It was after *Reformasi* when the more commonly used term, NGOs, was deliberately cast aside for the term, CSOs, in order to signify these organisations' association with the people and community rather than government or political parties. However, although democratisation in the post-Suharto era had opened a new opportunity for Indonesian CSOs, they still faced the challenges of maintaining the reform movement agenda and living up to the trust put in them by their beneficiaries, donors and government through enhancing their capacity to fight internal corruption and fraud.

Habibie's government was followed by Wahid in October 1999 when Wahid won the first democratic election after *Reformasi*. One telling step that Wahid did take very early on was to close down the Department of Information, the main propaganda and censorship instrument of the New Order in 1999 (Heryanto, 2010, p. 54). Wahid was known by his unique characters and an unconventional approach and relationship towards the press. He was more open with the media than any of the past presidents of Indonesia. Wahid served as the President of Indonesia until July 2001 (Lanti, 2010, p. 18).

Megawati, Sukarno's daughter, came into power when Wahid was removed from the office in July 2001. She served as the President of Indonesia until October 2004, when she was defeated by Yudhoyono in the 2004 presidential election. Indonesian political contestations during *Reformasi* through changes in government from Habibie to Wahid and Megawati within such a short time, from 1999 to 2001, had affected the flourishing of online discussions among Indonesians.

Yudhoyono is a retired Army general officer and the chairman of the Democratic Party of Indonesia who served as the President of Indonesia for two periods, from 2004 to 2014. Indonesian current president is President Joko Widodo, known as Jokowi. He is the seventh President of Indonesia and has been in office since 2014. Jokowi was previously a mayor of Surakarta from 2005 to 2012 and a governor of Jakarta from

2012 to 2014. He is the first Indonesian president without a military or high-ranking political background.

The details of each phase of internet development in Indonesia and its connection with democracy in Indonesia follows.

1980's: the Early Adopters

The first period that concerns this chapter starts in 1983 where along with the development of satellite-based telecommunication technology, a limited number of Indonesians first connected to the Internet through an initiative of the UINET (University of Indonesia Network) (Parapak, 1994, p. 66). At that time the Internet was only accessible at top universities like the *University of Indonesia* (UI) and *Bandung Technology Institute* and research institutions operating under IPTEKnet. This last (IPTEKnet), was a National Research Council project established as a non-commercial information network under the Minister of Research and Technology, Professor B. J. Habibie (Hill & Sen, 1997, pp. 71-72).

Habibe later became the President who oversaw the early transition to *Reformasi* after Suharto resigned. His role as sponsor of IPTEKnet was a precursor to the government's place as an actor in the structure of ICT policy development as per structuration theory.

The early years of the Internet in Indonesia coincided with the last stages of Suharto's New Order regime. As such, it was marked by the domination of state control and surveillance over Indonesian society. Lim (2006b, pp. 89-93) contends that Suharto's New Order government created national identities through the production and manipulation of symbols, ideas and images which were inserted in national events and programs legitimized by the 'authorized party'. The events and programs such as a flag ceremony on Monday morning, national physical exercise (*senam kesegaran jasmani*) on Friday morning, mass jogging on Sunday morning, *Televisi Masuk Desa* (government controlled national television entering the villages) program as an image of unification under *Palapa* satellite system, *Rukun Tetangga* and *Rukun Warga* systems were methods of organizing neighbours into layers of state representation to support the New Order regime and control society. To control civil society in Indonesia, force and fear were used by the New Order government in both hard and soft forms. The Indonesian Armed Forces was present in every province, district and

village in Indonesia and was both the largest employer and the provider of an impressive array of services from schools, health centres, agricultural extension and religious affairs offices. The Suharto government did not shy away from using this presence to reward supporters and punish opponents (Rock, 2003, pp. 12-13).

The three dominant political parties that existed during the New Order era were Golkar (*Partai Golongan Karya*, Party of the Functional Groups), PPP (United Development Party) and PDI (Indonesian Democratic Party). Problems experienced within political parties included corruption, self-absorbed parties, elitism, and weak institutions. Indonesia decided not to financially support political parties, which resulted in voracious methods on state resources conducted by political parties for their operations. Indonesian political parties then became vulnerable to manipulation by oligarchic interests (Mietzner, 2013).

Suharto's New Order government was highly effective at repressing and controlling popular groups in civil society and opposition political parties in Indonesia. Civil society groups such as labour unions, farmer organizations, student organizations, civil servants, teachers, and industry and business associations were organized and controlled as functional groups within Golkar, designed to turn out the vote for Suharto and other New Order politicians.

There were two major forces of influence within the New Order government that shaped the Indonesian economic policy. They were: the technocrats and economic nationalists. The technocrats favoured market reforms and a limited role for the government in the economy while the economic nationalists argued that trade protection and direct government investment and regulation were necessary to restrain foreign influence while mobilizing sufficient resources to modernise the economy.

During Suharto's New Order, the dominant political discourses were of economic stability, national development and security. Telecommunications technologies have long had a special place in this development era as an enabling factor for economic growth. The *Palapa* satellite system is one of the main project of that era. This domestic communication satellite system was inaugurated by Suharto on August 16, 1976 with the aim to unite the archipelagic country and support national infrastructure development. As Suharto (cited in Ibrahim, 2004, p. 4) declared that:

[t]hrough the Domestic Communications Satellite *Palapa*, we can make fast, smooth and good quality connection, so that the exchange of news and information from and to distant places can be undertaken easily and in a short period of time. This fast and accurate transfer of information is very important for the efficient running of the government and for economic activities, trade activities, defence and security, as well as other activities the development process. No less important is the role of the domestic communications satellite *Palapa* which has vast areas and consists of thousands of small and big islands that are connected by hundreds of straits and wide seas (Suharto cited in Ibrahim, 2004, p. 4).

An adequate telecommunication networks was crucial during the early years of Suharto's regime for national integration after independence, especially with regards to the country's geographic, demographic and socio-cultural conditions including the ever-present potential for regional, ideological and religious conflicts. An effective telecommunications system alongside that of transportation was prioritised by the Suharto government in successive Five Year Development Plans (*Repelita*) from 1968-1979. Suharto's government also viewed telecommunications services as an essential resource for supporting other development programs to do with the economic, political, socio-cultural, defence and security of Indonesia. Telecommunication infrastructure was seen as an important instrument for democratization and political process. It was also viewed as a socio-cultural tool for introducing the national language via television programs, supporting community development and educational programs as well as the armed forces communication networks (Ibrahim, 2004, pp. 7-8).

Technological evolution in communication tools had generated a new perspective in democratising information. Commencing with the role of radio as the primary sources of information during pre-independence Indonesia, then the use of printed media to get information during Sukarno regime, Indonesia under Suharto administration experienced a modern phase through television and satellite technologies. People had more alternative sources of information although certain information remained restricted, particularly with Suharto's propaganda of political stability and national symbolism.

The development of satellite technologies in Indonesia was also in line with the development of telecommunications corporations since the year of 1961. The state-owned companies established in 1961 and adapted from the Dutch colonial government, *Perumtel* (Perusahaan Umum Telekomunikasi) were the first providers of postal and telecommunications services in Indonesia. Telecommunication service was managed separately from postal services from 1965 and followed two years later by the establishment of a new state-owned enterprise, *PT Indosat* (PT Indonesian Satellite Corporation), which was established as a separate subsidiary of ITT (International Telephone and Telegraph Corporation). *PT Indosat* became the single provider of international telecommunications in Indonesia after being sold by ITT in 1980. Meanwhile, *Perumtel* became PT Telekomunikasi Indonesia (*Telkom*) in 1991 under Government Regulation No. 25/1991 and was managed as the provider of domestic services (Lumanto & Kosuge, 2005, p. 521).

Indonesian telecommunication market was, therefore, dominated by the duopoly of *PT Telkom* and *PT Indosat*. *PT Telkom* is the only national (state-owned) telecommunication company, with its subsidiary mobile operator: *PT Telkomsel*. Between 1994 and 1995 these two major state-owned enterprises were privatised by the government of Indonesia through Initial Public Offerings and joint ownership arrangements with most subsidiaries. *PT Indosat* was privatised in 2003, and later owned by a foreign (Qatar) telecom company, i.e. *Ooredoo Asia Telecommunication Pty*. *Ooredoo Asia* holds 65% of shares and the Indonesian government holds less than 15% of shares.

For this reason, *PT Telkom* and *PT Indosat* are the two companies I refer to when I discuss big business as one of the actors in the structure of Internet policy development in Indonesia after Giddens' structuration theory.

1994-1996: Internet became commercially available

The Internet finally became generally available to Indonesians in 1994, when the country was still facing considerable political strain. In June 1994 IPTEKnet proposed the provision of Internet access to academics and researchers. For the purposes of this thesis, it is important to note the crucial role that government continued to play,

through bodies like IPTEKnet, as an actor in the development of ICT Policy and infrastructure.

Indonesia's first licensed and commercial Internet Service Provider (ISP): RADNET was launched in May 1995 (Hill & Sen, 1997, pp. 71-72) and was followed by PT Indo Internet, an ISP in Jakarta that provided internet connections to the Indonesian government and limited members of the Indonesian public (Apster, February 2007, p. 1). There were five commercial ISPs operating by 1995, which grew to twenty-two in May 1996 (Hill & Sen, 1997, p. 73). In 1996 an ISP association, APJII (the Indonesia Internet Service Provider Association), was formed with the objective to foster a supportive environment for ISPs by negotiating and consulting with the government on ICT policies (Apster, February 2007, p. 1).

In 1994, Onno W Purbo and the Computer Network Research Group he established at Bandung Technology Institute, wanted to create affordable Internet access for society and bypass "the state-owned telecommunications company's domination" (Lim, 2006b, p. 94). They were able to do so when they "successfully hooked into the global Internet access via a Japanese satellite" with the aid of some engineering innovation (Lim, 2006b, p. 94). This practice of linking directly to satellites is what later allowed business to set up *warnet* (condensed from *warung* internet, internet kiosk) to provide internet access at an affordable price. The bypassing of state-owned and controlled telecommunications was pivotal to the Indonesian democracy.

As it was throughout most parts of the world, many of the earliest adopters of the Internet came from academia. Equipped with the necessary know-how and assurance, they were the ones able to improvise equipment and defy established media systems in Indonesia to create links to the online world. By 2003, these same academics were highly familiar with the Internet and its technologies, which may explain why rather than the wider public, they were the party consulted when the ITE was drafted in 2003 by the government.

This equating of academia with the public became much less tenable as Internet use spread across Indonesia and individuals with all levels of education and backgrounds located across the country also looked forward to use the Internet. For this reason, I argue that CSOs are more representative of public interest in ICT policy development

in Indonesia today as they are no longer government-funded or directed, run by grassroots volunteers and not associated with opposition parties.

As noted above, from the 1990s, the Internet became available and familiar to more Indonesians through the use of *warnet*. Lim (2003b, p. 242) describes the “*Warnet*, *warung* Internet [internet kiosk], [as] a small place equipped by several computers hooked to the Internet and rented on an hourly basis”. *Warnet* can also be understood as micro-civic spaces where people of any kind can meet, talk to and interact with each other about almost any topic free from the government’s and business interventions. Due to the economic crisis and the rise in telephone tariffs and subscription fees, *warnet* provided an important and affordable alternative to individual dial-in accounts with commercial ISPs. In fact, Lim (2003c, p. 276) states *warnet* was the most popular internet access point. Lim (2003c, p. 276) sees *warnet* as forming “an Indonesian Internet ... attached to the historic cultural context of Indonesian life”. In other words, *warnet* brought Indonesians together in both virtual and real life as they served as gathering points where people came to access the Internet and use it to contact or meet their friends and families and to do business such as selling and buying products and services.

During this period, the Internet became one of the major alternative media open to Indonesians seeking to express, share and discuss their ideas, views about the state’s control and corporate economy. Although still classified as “non-basic services” by the government, the Internet had by that point allowed information from the outside world to flow more freely into Indonesia to colour and influence events. For example, a free Internet mailing list known as *Apakabar* or INDONESIA-L moderated and contributed by John MacDougall in USA, which emerged during 1990s, was popular as a crucial source of uncensored domestic and global information (Hill & Sen, 1997, p. 75). *Apakabar*, together with the popular *warnet* were used to distribute alternative information about government programs and politicians’ practices in 1996 and to support the creation of open and democratic debate and the rise of civil society in Indonesia (Lim, 2002, p. 387).

Mailing-lists and *warnets* became technologies of freedom despite the Suharto government’s control of information through the Department of Information and SIUPP (government publication licence). According to Lim (2006a, p. 8), *warnet* has

been made popular for public to form people's characters and personalities to interact with others, even as a symbol of freedom from the state. In addition to other political and economic factors such as the Asian Financial Crisis, the growing appetite for freedom in Indonesian society is what gave rise to the conditions that forced Suharto to resign from his office as President of Indonesia in May 1998.

1996-1997: Asian financial crisis, people's dissatisfaction with government, *warnet* developed

Before *Reformasi* in 1998, most people in Indonesia had limited access to information and technology due to government policy and technology infrastructures. According to Lim (2003a, p. 424), *warnet* started to develop in late 1997 when financial crisis hit Indonesia. The 1997 economic crisis that caused the steep depreciation of Indonesian currency also had a major impact on the size of telephone bills, not to mention the cost of computers and internet connections. Lim (2003a, p. 236) claims that the Indonesian government agenda of regulating telecommunication with a monopoly owned-state companies and state capitalist system imposed a rigid circumstance for people in general to obtain information outside the state's authority.

Moreover, Lim (2003a, p. 239) argues that the existence of the Information Department in Suharto era was a form of the state's control of information and the expression of ideas across traditional broadcasting and print media. Technology was used to manage and disseminate information that was politically acceptable. The practices of censorship and bans on the production or distribution of certain publications were applied when the information displeased the government.

The New Order also involved some political efforts to control the dominant religions and institutional academics for state purposes. In their examination of printed and electronic mass media during the Suharto era, Hill and Sen (2000, p. 120) also found communication media to be highly restricted, often censored and concentrated under government regulations and business interests.

According to Hill and Sen (1997, p. 71), the Internet became increasingly well-known in Indonesian daily life during the period of 1996-1997 and increasingly the topic of much discussion among business people, government officials, political activists, and media professionals. Yet, it remained unclear exactly who within the Indonesian

government was responsible for the regulation of the Internet. Further, Lim (2003a, p. 240) suggests that the technological complexity of the Internet and the state's lack of capability in controlling the internet during the late of New Order (1997-1998) made it relatively free from restrictions vis-à-vis traditional broadcasting and print media.

Hill and Sen's (1997, p. 79) study identify three different departmental divisions in charge of telecommunication infrastructures, media content, and technology regulations and monitoring. They were *Deparpostel* (Department of Tourism, Post and Telecommunication), *Deppen* (Department of Information) and *Hankam* (Ministry of Defense and Security). According to Liu (2011, p. 41), during the New Order, the Department of Information sole focus was on traditional media. However, in 1995 the armed forces did create a special Internet unit to investigate inaccurate online information (Hill & Sen, 1997, p. 76).

Partial liberalisation implemented in Indonesian telecommunication system through PPP (Public Private Partnership) arrangements attempted to deal with the poor telecommunication development in Indonesia. The issue of regulatory capacity and experience also challenged the development process. Therefore, when the overthrow of authoritarian rule took place in Indonesia in 1998 with *Reformasi*, a new system of market restructuration and full competition was enforced to enhance telecommunication performance and network development. The 1998 *Reformasi* also influenced the contestation between big business and civil society.

1998: Reformasi

The political movement known as *Reformasi* in Indonesia was marked by the removal of President Suharto from office after 32 years. Panjaitan, cited in Nyman (2006, p. 46) describes *Reformasi* as “a gradual process of change in political structures, mechanisms and culture, in order to create a more democratic political environment that strives for greater freedom, unity, justice and people's sovereignty”. This period was marked by the increased media liberalisation and a growing democratisation in Indonesia. *Reformasi* in Indonesia also witnessed the rapid growth of civil society organizations, especially non-government organizations engaged in community development and advocacy (Mishra, 2002, p. 12).

Both the Asian financial crisis in 1997 and the political change of May 1998 created a strong impetus towards technological development in Indonesia. As already mentioned, the number of ISPs decreased in 1998 as the economic crisis saw the cost of international connection and telephone calls tariff increase. As a consequence, *warnet* became the most common and affordable access points to the Internet during the economy crisis. In fact, according to Purbo (2003, p. 97), *warnet* provided 60 to 70 per cent of connections through almost 1,500 outlets in 2001 in major cities in Indonesia. Connections were made possible by the use of wireless fidelity (WiFi) infrastructure and privately driven without government involvement. According to Goswami (2008, p. 134), this innovative use of WiFi was the work of some creative individuals who worked at universities and research centres, as mentioned earlier as Onno's and his colleagues' project. Their aim was to find better and more affordable access to the Internet for the public other than through ISP connections. WiFi connections were also seen as an ideal solution to Indonesia's challenging topography.

Reformasi, the mass use of *warnet* and Information and Communication Technologies (ICTs) towards 2000s contributed to the growing democratisation of Indonesian by creating a more open political space for Indonesians. The power of people, rights to freedom of expression, voicing dissent and empowerment were some narratives that *Reformasi* had brought for Indonesians. The dominant narrative then was social change occurred with greater impact. The greater impact can only be generated when people's movement was lifted by technology, and the Internet particularly.

The growth of middle class especially in central cities such as Jakarta, played important roles in strengthening the process of democracy in Indonesia by the use of technology and information. As Aspinall (2005, p. 260) argues, economic growth within Suharto's early government (1966-1980) gave birth to a larger, better-educated middle class with interests in democracy. Hand in hand with these interests were the demand for more and varied sources of information. This led ultimately to the liberalisation of infrastructure and regulatory frameworks from Indonesian government, in particular from the Yudhoyono government (2004-2014).

As actors in the structure of ICT policy development, the government, civil society and big business all played a part in the formation and set up of the Internet in Indonesia. The actors were both facilitators and resisters in the structure. For example,

the effort to bypass state-owned telecommunications infrastructure had created an alternative means of accessing the Internet for Indonesians. Social practices such as freedom to source and share information freely were facilitated by the alternative means of access available via *warnets* and the failure of the government to turn their attention to the content being circulated online.

Throughout these three phases of the Internet's development in Indonesia, regulation of telecommunications was covered by the Telecommunication Law of 1989. In 1999 it was replaced with the Telecommunication Act of 1999 as the major political change in the Indonesian government, *Reformasi*, took place in 1998. ITE as the major law of the Indonesian Law of Internet, had taken eight years after *Reformasi* to be enacted in 2008, although it was firstly drafted in 2003. The details of periods of regulating Internet in Indonesia will be discussed briefly in the next chapter.

Conclusion

The intrinsic connection between the Internet and democracy in Indonesia can be explained by looking at the historical development of the Internet in Indonesia and the development of new political space in the lead up to *Reformasi* (reform) and afterwards. Indonesian political system today is a result of historical experience from the notion of early liberalism by the Dutch to a notion of democracy which was interpreted in many forms such as parliamentary and guided democracies during Sukarno era. The idea of democracy even translated into a Pancasila democracy after Sukarno's government. However, democracy was substituted by the authoritarian style of government during the New Order in which Suharto, *ABRI*, and *Golkar* were in control of Indonesian political system for 32 years. It was since *Reformasi* which took place in 1998 and ended New Order period, Indonesian democracy has been moving towards a more deliberative form.

The historical development of the Internet in Indonesia and the existence of such democratic space in the 1998 *Reformasi*, provides a context for understanding changes in the ways Indonesian people communicate, express their opinions, and empower themselves as the effect of democratising the internet

Chapter 4. Regulating the Indonesian Internet: From Telecommunication Law of 1999 to ITE of 2008

Introduction

This chapter examines telecommunication and Internet infrastructure development approaches in Indonesia through tracing the various government changes from 1983 to 2016. The aim is to provide the context for understanding the ongoing transformations of Indonesia's Internet strategies towards the Internet. It demonstrates that there have been overlapping law and governance of Internet and governments' approaches in regulating the Internet in Indonesia from 1983 to 2016. The central question this chapter asks is: how have telecommunication and Internet policies developed in Indonesia since the Suharto era?

The chapter begins with the regulation of postal services and telecommunications through to the Internet. It continues the work done in Chapter 2 to explain why the Internet is so deeply integrated into ideals of democracy in Indonesia. Taking its cue from Lim (2003b, p. 234), who argues that "technological transformations are embedded in power relations", it seeks to further explicate the connections between changing government approaches to ICT policy and technological change in Indonesia. The government's approach in this chapter is understood to include policies, laws, regulations, programs, strategies and plans as they relate to telecommunication and ICT development.

In tracing the history of these developments, I expect to add to the depth of understanding of how the three actors—government, big business and CSOs—interact to inform and construct the structure of Internet policy development in Indonesia. Together, these three actors also create the social practices that constitute the structure of ICT policy development in the country. Practices are used, after Giddens' structuration theory, to denote actions that are part of the ICT policy development process and include consultation, enactment, implementation and revision actions.

These practices are contested and repeated by the actors as they interact. Their interactions might facilitate, accommodate and even produce certain practices that strengthen their relations by resolving tensions. In this case, a new social structure might be formed as the result of actors' interactions. However, it cannot be denied that a contrary result might take place where actors' interactions are less mutual and conflicting.

As in Chapter 2, I divide the period under study into three parts to facilitate examination. Each part represents major turning points of telecommunication reform in Indonesia from the monopoly control of the state and government in telecommunications into the liberalisation model and the ITE law implemented post *Reformasi*. They are: the telecommunication law of 1989; the telecommunication reform from 1999 and; the ITE post-enactment from 2008. However, because policy tends to be formed retrospectively to technological development, the three periods in Chapters 2 and 3 do not entirely coincide with each. Instead, as the following table shows, there is considerable lag between the introduction of telecommunication technology and the policies that govern them:

Table 1. Lag between the introduction of telecommunication technology and the policies

Year	Chapter 3	Chapter 4
1983	Early adopters access the Internet via IPTEKnet	
1989		Telecommunication Act 3/ 1989
1994	Commercially available internet	
1998	<i>Reformasi</i>	
1999		Telecommunication Act 36/1999
2003	Draft of ITE	
2008	Enactment of ITE 2008	
2016	Revisions to ITE	

Each of the periods will be discussed in further detail in later sections. As must be obvious by now, I am drawing a picture of the major technological, political and policy changes that led up to the enactment of the ITE and its aftermath.

As my focus is on the Internet, I do not go any further back than 1983. However even from the start during the era of its first president, Sukarno, the government of Indonesia maintained a state monopoly to control and manage the telecommunication industry, using the 1964 Telecommunication Act No. 5. This Act covered all communication services and was used to regulate postal services, radio and newspapers during the early years of nation-building as means of disseminating propaganda. The 1964 Telecommunication Law's main objective was to harness telecommunication to serve national interests especially in the development of politics, economy and military institutions. It granted the government full authority as the regulator and operator of Indonesia's telecommunication system (Sugondo & Bhinekawati, 2004, p. 99).

In 1976 the nation's telecommunication infrastructure was brought up to date when *Palapa*, the national satellite system, was launched by President Suharto (Barker, 2005, p. 703). Even with loans from international donors for developing telecommunications infrastructure in Indonesia, a limited state budget led the government to reform the telecommunication sector by implementing the Telecommunication Act No. 3 in 1989.

The main objective of the 1989 reform was to reduce reliance on public funding by introducing and authorising private investment into the sector as a means of meeting the growing demand for telecom services. The absolute control of the state in telecommunication sector was lessened through strategies of revenue-sharing agreements, joint-venture companies and joint operations. By 1995, public funding had ceased and the government formed a strategic alliance with two domestic private companies: *PT Telkom* and *PT Indosat*, and a foreign company, *Satelindo*, for the provision of international and mobile basic services (Lee & Findlay, 2005, p. 342).

I begin my examination in this chapter in 1983 when the early adopters first enjoyed access to the Internet through their work on the National Research Council's projects and research institutions under IPTEKnet (Hill & Sen, 1997, pp. 71-72). Despite the

small pool of early adopters, the early years of the Internet in Indonesia were important because it was when Indonesians were first introduced to and learnt to use the new technology as well as understand it as an alternative form of communication and interaction. 1983, therefore, marks the first turning point in Indonesian telecommunication and ICT policy development. As discussed in Chapter two, the interim between the 1989 and 1999 Telecommunication Acts, two major events occurred that left their mark on Indonesian society and led to significant changes in ICT policy. They were the 1997 financial crisis and *Reformasi*.

As Suharto stepped down in 1998, a new style of leadership and government came into power with President Habibie. In contrast to Suharto, Habibie had never served in the military and was moreover, the same academic who initiated IPTEKnet in the 1980s. His style of leadership made for a change in how the government communicated with its people. Information became less restricted and the number of sources for media and communication increased. In fact, soon after he was in office, Habibie abolished the *Surat Ijin Usaha Penerbitan Pers* (SIUPP), the press licensing system in Indonesia (Lanti, 2010). As government controls relaxed and information sources grew, Indonesians were able to express their opinions more openly and publicly.

The second period of concern in this chapter begins with Indonesian telecommunication reform in 1999. It can be linked to the enactment of Telecommunication Act No. 36 to accelerate the liberalisation of telecommunications services through market restructuring and regulatory reform. Open competition was introduced to accelerate the restructure of the fixed-line and mobile services market using a licensing scheme for telecommunication operators. The Indonesian Telecommunication Regulatory Body (BRTI) was also established in this period to ensure principles of transparent, independence and competition as part of reform in the telecommunication industry (Lee & Findlay, 2005, p. 355).

Following the reform of the bureaucracy in 1999, the authority to regulate telecommunications was transferred to the Ministry of Communication and Information (MCI, with the Directorate General of Posts and Telecommunications (DGPT) under the MCI acting as the enforcement agency. Prior to 1999,

telecommunications was the responsibility of the Ministry of Tourism, Posts and Telecommunications (MTPT).

Changes in government system into quasi-democratic systems continued under the successive leadership of Presidents Habibie, Wahid and Megawati following *Reformasi* also facilitated public involvement in growing social and political organisations, discussions and momentous events such as the 1999 and 2004 national elections. ICT and the Internet made the process of democratic elections and information about them available to the public, not only in Indonesia but also abroad. It was also during this period that Internet usage increased dramatically and the government initiated the e-government program in 2003 (Rachmawati, Suhartanto, & Sensuse, 2012, p. 51). The practice of e-government became popular since the introduction of the Presidential Instruction No. 3/2003 which contains national policy and strategy pertaining e-government development in Indonesia. In addition, the Yudhoyono government formed a specific body, *Detiknas* (the National ICT Council), to organize an integrated ICT policy within government departments nationally and locally in 2006 (Detiknas, 2010).

The third period that concerns this chapter starts in 2008, immediately following the enactment of the ITE and continues to 2016. ITE was enacted to address the needs and interests of actors invested and participating in e-commerce who sought assurance of its legal status and protections in Indonesia. Among other things ITE introduced the acknowledgment of digital signatures and electronic proof as valid evidence in a court (Kementerian Komunikasi dan Informatika, 2010). ITE remains the only law in Indonesia that directly addresses the conduct of cyber activities but it has proven controversial because its regulation of prohibited acts online has been too vaguely and broadly formulated (Eddyono et al., January 2016).

It was during the second term of Yudhoyono's government that ICT development was finally consolidated through a national ICT strategy. The ICT White Paper drawn up in 2010 is the Indonesian roadmap containing projections of ICT infrastructure development up to 2020 (Kementerian Komunikasi dan Informatika, 2010). The

following table illustrates the three periods outlined above and the key events that occurred therein:

Table 2. The development of Indonesia telecommunication and ICT infrastructure and policies

Year	Changes in technologies	Changes in policies	Government periods and actors
Before 1983	Radio, newspaper and postal services. Satellite development in 1976	Telecommunication Act no 5/1964: Government monopoly as regulator and operator of telecommunications	President Sukarno (1945 – 1965) President Suharto (1966 – 1998) <i>Indosat, Perumtel and Satelindo</i>
Telecommunication Law 1989 (1983 - 1998)	Newspaper and television. The Internet was introduced in 1983	Telecommunication Act no 3/1989: Liberalisation/privatisation, government as regulator and private investment in Telecommunication industry. The Act implemented PPP (Public Private Partnership) program, <i>Kerja Sama Operasi</i> (Joint Venture) program and <i>Pola Bagi Hasil</i> (Revenue Sharing) program.	Suharto <i>Telkom and Indosat</i> CSOs (donors' aid and students movement)
The 1999 telecommunication reform (1999 - 2008)	Digital media and convergence platform a key national ICT program: the National Single Window (INSW) system applications in 2007 Universal Service Obligation (Casey & Toyli) program began in 2007	Telecommunication Act no 36/1999 The law divided the policy and regulatory functions, increased private participation, and guaranteed justice and equity principles in the telecommunication sector. <i>Reformasi</i> and second term of liberalisation of Telecommunication industry to enhance ICT development as economy enabler. Nusantara 21 program started in 2000	Habibie (1998 – 1999) Wahid (1999 – 2001) Megawati (2001 – 2004) Yudhoyono (2004 – 2014) Civil society (CSOs) as campaign initiators to balance government policies. ICTwatch in 2002

		<p>Presidential Instruction No 6/2001: Telecommunication, Media and Information. Telematics technology should be used by government officials to enhance a democracy process and good governance.</p> <p>Formation of Indonesian Telecommunications Regulatory Body (BRTI) in 2003 to ensure transparency, independency and fairness in telecommunication network and service operations.</p>	
ITE post-enactment (2008-2016)	<p>Palapa Ring Project in 2009</p> <p>BWA (Broadband Wireless Access) service and network competition was introduced by the Indonesian government in 2009 to increase ICT tele-density</p> <p>A Community Access Point (CAP) scheme as the Internet community centres in 2012.</p> <p>78,160 base transceiver stations across the country to support basic telephony services.</p>	<p>Telecommunication Act no 36/1999</p> <p>ITE no 11/2008</p> <p>Ministerial regulations of negative content in 2010</p> <p>A national ICT Roadmap 2010-2020 along with a national flagship program in 2010</p> <p>Indonesian Economy Development Expansion Acceleration (MP3EI) Masterplan establishment. MP3EI is a strategic direction for accelerating and widening Indonesia economy development during period 15 years from 2011-2025 in accordance to National Long Term Development Planning 2005-2025</p>	<p>Yudhoyono (2004 – 2014)</p> <p>Jokowi (2014 – present)</p> <p><i>Telkom, Indosat</i></p> <p><i>Satudunia</i> and <i>Medialink</i> in 2010</p> <p>Civil society (CSOs, individuals using social media apps)</p>

In the following sections, each of the three periods: 1983-1998; 1999-2008 and; 2008-2016 will be explored in detail to provide the necessary background to understanding the dynamic processes of telecommunication and Internet policy development in Indonesia.

1983 – 1998: Telecommunication Law of 1989

The first period is the period in which Suharto government and *Telkom* (a state-owned company) were the dominant players in developing Indonesian telecommunication infrastructure and managing telecommunication policies. During the 1990s, both the telecommunication and ICT systems and sectors were regulated by the Telecommunication Act No. 3/1989. The Act allowed the Indonesian telecommunication sector to be liberalised by introducing private investment in the telecommunication industry. As Sugondo and Bhinekawati tell it, by 1995 the government's plan was to have all telecommunication development financed by private companies, leaving the government as the regulator of telecommunication industry (2004, p. 99). The 1989 Act permitted private investors to provide basic services through PPP (Public Private Partnership) arrangements. The KSO (*Kerja Sama Operasi/* Joint Venture Operation) scheme became the only option available for domestic fixed-lined services, while either the PBH (*Pola Bagi Hasil/* Revenue-Sharing Agreement) or a JVC (Joint Venture Company) models was possible for mobile services.

The Act also classified telecommunication services into one of two categories, basic and non-basic. Basic services were controlled by the government and operated by the two state-owned companies: *Telkom* and *Indosat* as the 'operating bodies'. *Satelindo* joined as the third operating bodies for the provision of international and mobile basic services in 1994 as a joint venture company. One year after that, *Telkom* was granted a 15-year exclusive right as fixed-line basic provider and *Indosat/Satelindo* received a 10-year exclusive right to provide international services (Lee & Findlay, 2005, p. 344).

For non-basic services, the 1989 Act relaxed entry restrictions for private operators ('other bodies'). As a result, by 1999 there were hundreds of ISPs and many operators of Internet telephony service in Indonesia. However, as there were complaints from the 'operating bodies' of claims about government income in early 2000, the

government restructured the setup of Internet telephony service providers requiring them to have a licence or merge with *Telkom* and *Indosat* (Lee & Findlay, 2005).

1999 – 2008: Telecommunication Law of 1999

The year of 1999 was seen as an important phase of telecommunication reform, which occurred alongside the national program of economic reform. This second period of Indonesian telecommunication reform was marked by the introduction of Telecommunication Act 36/1999, which superseded the previous Act, Telecommunication Act 3/1989 and deregulated private participation in the telecommunication industry through public-private partnership programs. The new Act reinforced the liberalisation of the telecommunication industry from a monopoly of two state-owned telecommunication operators: *PT Telkom* and *Indosat* to one supported by a pro-competitive regulatory system (Lee & Findlay, 2005, p. 341). Under the Indonesian legal system, the Telecommunication Act outlines only the basic principles, and authorises detailed implementation measures to be determined by the designated ministry (the Ministry of Communications and Information) through governmental, ministerial and the Indonesian Telecommunication Regulatory Body (DGPT) administrative decrees, depending on the nature of the subject.

The 1999 Act had two main reform objectives. They were to restructure how telecommunication companies operate to improve competition and to reduce the disparity in access to telecommunication services across the spread of Indonesia. As Lee & Findlay (2005, p. 354) explain:

The government initiated the 1999 reform phase with the publication in 1999 of the ‘Telecom Development Blueprint’. According to the Blue-print, the primary objectives of the 1999 reform were: first, to move away from the traditional public-private partnership (PPP) model so that private operators were no longer required to cooperate with a state-owned incumbent in all service categories; second, to introduce competition through a sequenced approach, by creating a duopoly market structure in fixed-line operations between *Telkom* and *Indosat*, and to have the two incumbents compete in the domestic and international service markets; and finally to establish a regulatory

framework that is transparent, independent and pro-competition. These principles were reflected in the enactment of Telecom Act 36/1999 (the 1999 Act) in 2000.

Following the 1999 Act, Presidential Decree No. 6, 'Information and Communication Technology Development and Usability in Indonesia' was issued in 2001 as an indication of the government's commitment to making the optimal use of ICTs in Indonesian society and to unify the nation (Utoyo & Mudiardjo, 2007, p. 161). In 2001, the government also released a 5-year Action Plan for the Development and Implementation of ICTs by Presidential Instruction No 6/2001 as a framework for policy development in telecommunications, IT and e-commerce. This action plan was implemented by TKTi (Indonesian Telematics Coordinating Team), itself formed in 2003 by Presidential Decree No. 9/2003 (Zita, 2005). Through TKTi, the government made an effort to coordinate across state agencies and promote *warnets*. TKTi was also responsible for telecommunication infrastructure and applications, legal structures, human resources, finance and investment, standardization issues and e-government. Indonesian government also began to develop the National Information System program (Sisfonas) in 2002 to provide telecommunication services to rural villages across Indonesia by 2010 (Utoyo & Mudiardjo, 2007, p. 165).

Within this period, the government of Indonesia started to focus more on the development of ICT policies. Through the establishment of *Detiknas* or the Indonesian National ICT Council in 2006, the government under Yudhoyono sought to accelerate the growth of ICT through a synchronization of ICT programs between government departments, ministries and units. *Detiknas* is an executive-coordinated body formed in 2006 by a Presidential decree No. 20/2006 and headed by the President of the Republic of Indonesia. It manages a number of strategic national ICT flagship programs which act as the basis for other Indonesian ICT programs development and element of Indonesian ICT blueprint. The flagship programs that extend from the e-Indonesia program in 2006 consist of seven programs such as e-procurement, e-education, e-budget, National Single Window (INSW), Single Identity Number (SIN), the Palapa Ring project, and a software legalization program (Detiknas, 2010).

In 2007, there were two other significant government efforts in the area of Internet policy. First was the establishment of ID-SIRTII (The Indonesia Security Incident

Responses Team on Internet Infrastructure). ID-SIRTII was responsible for ensuring network safety and security in accordance with Indonesian laws. Its aim was to discourage and eliminate the misuse of Internet applications such as hacking, cyber criminalities and terrorism. The team includes representatives of the Central Bank, academics, ICT experts and law enforcement bodies. The team is also expected to assist the Minister of Communication and Information Technology in discharging the planning, coordinating, supervising and controlling functions of ID-SIRTII (Utoyo & Mudiardjo, 2007, p. 164). Second was the assignment of BRTI to amend the Telecommunication Law in late 2007. As explained previously in chapter 1, BRTI acted as the Indonesian primary regulatory decision-making body to ensure the principles of transparency, independency and fairness in telecommunication network and service operations (Lee & Findlay, 2005).

This period is also important as the first draft of the ITE was prepared in 2003 by Directorate General of Post and Telecommunication (DGPT) and the Department of Industry and Trade. The draft was then discussed with academic elites from *Padjadjaran* University, University of Indonesia, and Institute of Technology Bandung before it was delivered to the House of Representatives (DPR) by President Yudhoyono in 2005. The ITE Bill was deliberated in DPR together with the Minister of Communication and Information and the Minister of Law and Human Rights as government representatives. During the deliberation process in DPR, Yudhoyono created a task force to undertake discussion of the ITE. After extensive deliberations carried out from 2006 to 2008, ITE was finally enacted in March 2008 (Zulhuda, 2003).

There are two points of note in the seemingly straightforward process described above. The first is the absence of consultation with CSOs and big business, the second is the omission of broader dissemination of the Bill under discussion to the Indonesian public. Both of these meant that public participation in the process was limited to the elites in academia and government, bypassing the feedback and input of ordinary Indonesians. If we view this through the lens of structuration theory, then it is possible to say that an actor (the public) essential to the success of the structure and the social practices that ensue from it was conspicuously absent. I discuss the consequences of their omission further in chapter 5 but it is sufficient to note at this point that after its

enactment, the ITE had faced judicial reviews twice in 2008 and 2009 and encountered lots of protests and concerns regarding ambiguous and imprecise formulation of certain articles.

2008 – 2016: ITE enactment, implementation and revision process

The third stage of Indonesian telecommunication history sees further development of national, strategic and integrated policies for ICT. The enactment of the ITE in 2008 established rules for the protection of private rights and data, certificates of authority, domain names, dispute resolution and intellectual property rights. Any deliberate, unauthorised, and unlawful interception or tapping of electronic information and/or electronic documents or its transmission, other than for the purpose of a legal enforcement is a breach of the ITE and subject to sanctions. The law also prohibits online pornography, gambling, slurs and defamatory attacks, extortion and threats (Meurling et al., 2012, p. 243).

The Law No 11/2008 of Electronic Information and Transaction states that the government facilitates the usage of ICT and electronic transactions according to the regulations embedded. The Law also mentions that the government provides protection to public interest from any disturbances resulting from the misuse of electronic information and transactions that might disrupt national security. As already mentioned, ITE's intent was to facilitate e-commerce by guaranteeing the acceptance of electronic or digital signatures as legal evidence in the courts of Indonesia (Ministry of Communication and Information). The second term of the Yudhoyono government, which began in 2009 was, therefore, a period where a stable, if fairly new, democracy was able to demonstrate a strong commitment towards ICT development in Indonesia. The bulk of ITE and its original impetus is concerned with enabling e-commerce in Indonesia and assuring merchants interested in taking up the vast new markets online of its security. However, there remain nine articles in ITE that needed further explanation using state and ministerial regulations. They are article 10 of certification institution, article 11 of electronic signature, article 13 of electronic certification administration, article 16 of electronic system administration, article 17 of electronic transaction administration, article 22 of electronic agent administration, article 24 of domain name management, article 31 of interception procedure, and article 40 of government role in ICT use. In 2011, after two years of implementing ITE enactment,

MCI confirmed there to be slow response towards specific regulations needed for these nine articles, and that this resulted in uncertainty over supporting regulations for online transactions in Indonesia (Eddyono et al., January 2016).

From 2008 to 2013, attempts to revise ITE by CSOs met with silence from the Indonesian government, the MCI and DPR, although there was a steep increase in infringements against ITE during that period. Article 27 of ITE, which relates to illegal Internet content, was badly in need of more detailed explanations that were not forthcoming from government or ministerial regulations as required (Djafar & Abidin, 2014). Small wonder, then, that a report from ELSAM (Institute for Policy Research and Advocacy), as CSO's representation, concluded that regulating Internet content using ITE was not appropriate as the law opposes the right of freedom of expression (Djafar & Abidin, 2014). In lieu of greater clarity about how ITE could be properly implemented during that five-year period, it was left to the Ministry of Communication and Information to regulate Internet use.

Towards the end of President Yudhoyono's second term in 2014, the government suggested a positive response over the revision of ITE. Finally the revision of ITE was placed on the list of the National Legislation Program in 2015 under the Jokowi administration. The process of revising the ITE policy commenced in 2016 and completed by November 2016. Although the ITE revision process was only on minor aspects of the law, the revising law has been implemented since then as the Indonesian cyber law.

The Indonesian political system of this period was significantly impacted by the national election in 2009 and the use of ICTs. For example, compared to the 2004 general election, the 2009 general election was distinguished by the progress in how the political parties used ICT technologies such as social media in campaigning for election. According to Tomsa (2008), *Golkar* (*Partai Golongan Karya* or Functional Groups Party) and PKS (*Partai Keadilan Sejahtera* or Prosperous Justice Party) were two parties in Indonesia that had relatively high level of institutionalization, compared with other parties inside and outside the DPR. The high institutionalization leads to social media mandates because it enables parties to develop newer and more sophisticated electoral strategies, which is why *Golkar* and PKS were the only ones to enact formal party policy towards social media (Purwoko, 2011), (Sihaloho, 2011).

In 2009, the Yudhoyono government made a commitment to free and open source software campaigns within Indonesian ministries to support creativity and independence in ICT. This policy was also a response to two problems: the prevalence of illegal software and piracy and, the limited budgets of government. The policy was enacted as reference of the legal and open source software usage and utilization in March 2009 (Kementerian Komunikasi dan Informatika, 2012, p. 140). .

President Yudhoyono, who began his second term in 2009 also made a strong commitment towards ICT development by projecting a national ICT Roadmap 2010-2020 which aims to reach a status of 'Indonesia Digital' in 2020 in relation to the vision of 'Indonesia Information Society' in 2025. The national ICT roadmap was then documented as the White Paper of ICT in Indonesia in 2010. The White Paper is designed to be the milestone and outlook of communication and information development in Indonesia. It contains the Indonesian ICT development strategy in four stages, namely 'Indonesia Connected', 'Indonesia Informative', 'Indonesia Broadband', and 'Indonesia Digital'. (Kementerian Komunikasi dan Informatika, 2010, p.80). Indonesian ICT roadmap promises a connected Indonesia, which assures no blank spots of Internet signals within all regions in Indonesia. This roadmap has been underway since 2011 and it is planned that remote and border areas across Indonesia have Internet access by the year of 2020. The White Paper of ICT in Indonesia was also one of eight primary programs of 22 Indonesian main economy sectors, known as MP3EI (Indonesia Economy Development Expansion Acceleration Masterplan) establishment (Kementerian Komunikasi dan Informatika, 2012). MP3EI is a strategic direction for accelerating and widening Indonesia economy development during period 15 years from 2011-2025 in accordance to the National Long Term Development Planning 2005-2025.

Following the MP3EI, The Ministry of Communication and Information has constructed priority programs which have been constantly developed such as the 'Internet Sehat' program, the Information Security program, the digital television migration program, the 'Palapa Ring' project, e-government and e-business development programs. A funding scheme of ICT Fund was also formed by the Ministry of Communication and Information Regulation No. 23/2012 to finance the

broadband service development in Indonesia which was completed in 2014 (Ministry of Communication and Information, 2014).

A joint responsibility system between several directorates under the Ministry of Communication and Information was implemented during Yudhoyono government, mainly an arrangement between the Directorate General of Post and Telecommunication, and the BRTI to manage Indonesian telecommunications standards, rules and policies. There are also some other institutions and organisations that have concerns towards ICT development in Indonesia. For example, the state Ministry of Research and Technology which is responsible for expanding ICT infrastructure through the development of computer hardware and applications; the Indonesian ISP Association (APJII); the Indonesian Information and Communication Society (MASTEL) which bridges the government and ICT industry group; the Indonesian Information Technology Federation (FTII) which promotes the growth of IT applications and industry; and the Indonesian Domain Name Registry (PANDI) which was formed in 2006 to reduce Indonesia's dependence on overseas domains (Utoyo & Mudiardjo, 2009, p. 203). These different types of organisations show that a multi-stakeholder principle is involved in ICT development in Indonesia.

In its second-term of the Yudhoyono government, led by the Ministry of Communication and Information, Indonesian government also committed to improve the human resources in ICT and reinforce institutions' commitments in ICT usage and development in Indonesia. This commitment is supported by the establishment of an institution of multimedia centre in Yogyakarta as the source of skilful human resources in ICT. Yudhoyono government's commitment to democratise Internet policy also emerged. Towards the end of Yudhoyono second-term of government in 2014, ITE was prioritised to be discussed in the National Legislation Program in 2015 for a revision.

Conclusion

The interactions among the three actors – government, big business and CSOs – in the Indonesian Internet policy development are parts of political context and changes of government system. These interactions, sometimes contestations, inform and construct the structure of Internet policy development in Indonesia. Together, these three actors

also create the social practices that constitute the structure of ICT policy development in the country. Through all of the above, it is manifestly clear that in Indonesia the style of government affected how big business operated and that together, these two actors in the structure of ICT policy are instrumental to producing and maintaining practices within society.

This chapter had investigated that there have been overlapping law and governance of Internet and governments' approaches in regulating the Internet in Indonesia from 1983 to 2016. The government of Indonesia had approached to regulate the Internet through three major periods: from 1983 to 1998, 1999 to 2008, and 2008 to 2016. The Indonesian government began to regulate postal service and telecommunication industry in 1983 by implementing the Telecommunication Act No 5/1964. As telecommunication technology developed towards the 90s, the Act then was reformed from a monopoly control of the state and government in telecommunications into the liberalisation model by implementing the Telecommunication Law of 1989. The Law had a purpose to enhance both telecommunication and ICT systems and sectors in Indonesia by introducing private investment within the telecommunication industry, which was not presented before. This initiation had made a major breakthrough for Indonesian telecommunication industry.

When the system of Indonesian government had been reformed significantly in 1998 and an economic reform was its major agenda, the Telecommunication Law of 1989 was reformed into the Telecommunication Law of 1999. The Indonesian government then deregulated private participation in the telecommunication industry through public-private partnership programs. The new Act reinforced the liberalisation of the telecommunication industry from a monopoly of two state-owned telecommunication operators: *PT Telkom* and *PT Indosat* to one supported by a pro-competitive regulatory system. Within this period, the government of Indonesia started to focus more on the development of ICT policies by establishing several government bodies such as ICT Council, ID-SIRTII and BRTI to ensure more supports towards ICT development in Indonesia. This period is also important as the first draft of the ITE was prepared in 2003 by Directorate General of Post and Telecommunication (DGPT) and the Department of Industry and Trade. The draft then was discussed by some academic elites, then was deliberated in DPR and finally enacted as ITE Law in March 2008.

Within the process of ITE draft discussion and deliberation, there are two important points to note. The first is the absence of consultation with CSOs and big business, the second is the omission of broader dissemination of the Bill under discussion to the Indonesian public. Both of these meant that public participation in the process was limited to the elites in academia and government, bypassing the feedback and input of ordinary Indonesians. If we view this through the lens of structuration theory, then it is possible to say that an actor (the public) essential to the success of the structure and the social practices that ensue from it was conspicuously absent.

Entering a period after 10 years of *Reformasi* in Indonesia, from 2008 to 2016, the Indonesian government made some efforts to further develop national, strategic and integrated policies for ICT. An important point to note within this period is a dynamic process of ITE enactment, implementation and revision. ITE had been responded by the Indonesian public due to its vagueness in formulating some Articles concerned with the definition of information. As the Yudhoyono's government became more stable in his second period of presidential, ITE's intent was to enable e-commerce in Indonesia and assure merchants interested in taking up the vast new markets online of its security. However, there remain nine articles in ITE that needed further explanation using state and ministerial regulations. This had resulted in some attempts to revise ITE since 2009 by the Indonesian public, represented by CSOs. However, these initiations met with silence from the Indonesian government, the MCI and DPR, although there was a steep increase in infringements against ITE during that period. Towards the end of Yudhoyono second-term of government in 2014, ITE was prioritised to be discussed in the National Legislation Program in 2015 for a revision.

Practices are used, after Giddens' structuration theory, to denote actions that are part of the ICT policy development process and include consultation, enactment, implementation and revision actions. These practices are contested and repeated by the actors as they interact. Their interactions might facilitate, accommodate and even produce certain practices that strengthen their relations by resolving tensions. In this case, a new social structure might be formed as the result of actors' interactions. However, it cannot be denied that a contrary result might take place where actors' interactions are less mutual and conflicting.

To discuss how these practices are contested and repeated by actors, the next chapter will investigate and analyse the ITE formation, implementation and revision process using the theoretical framework of Giddens' structuration theory.

Chapter 5. ITE Formation Process

Introduction

The purpose of this chapter is to further break down and analyse the ICT policy formation process using the theoretical framework of Giddens' structuration theory. In particular, it seeks to view the policy formation process through the macro and micro lens of Giddens' structuration theory. The example of Malaysia is later introduced to provide broader contextual understanding of ICT policy development in the Southeast Asian region.

Giddens' structuration theory acknowledges the interaction of meaning, standards and values, and power, which suggests a dynamic relationship in society. For Giddens (1982, pp. 8-10), structuration is the structuring of social relations across time and space and he sees the reproduction of social systems as an active process of the actors' performances. And structure in Giddens' view is maintained and adapted through the exercise of agency. According to Giddens (1984, p. 17), "structures in social analysis refer to recursively organized sets of rules and resources which are both medium and outcome of social practices".

As outlined in Chapter 2, Giddens (1984, p. 17), treats structure as rules and resources, not as an isolated set of properties. He further separates rules into two categories: normative rules and codes of signification. Normative rules are rules that govern behaviour, while codes of signification refer to rules in which meaning is produced. Giddens' account of rules refers to the modes of transformative relations integrated into a rehearsed set of social practices, which express forms of domination and power. Normative rules are of great relevance in this thesis because in many instances, ITE was written primarily with the intention of regulating norms of online behaviour in transactions of e-commerce.

Within the framework of structuration theory, the ITE formation process acts as the structure created from government's initiative to facilitate and protect electronic business transactions. The structure is important as it conjoins the roles of the interactions, discussions and exchanges between the government, the three CSOs and big businesses in ICT policy formation process. It is the structure, power and facilities derived from actors' interactions and contestations that dominate the Indonesian telecommunication system and policy formation process.

The structure was further developed as other actors such as big corporations and a few members of the elite from top universities became involved with the process of ITE formation. These actors produced practices - play as a micro lens of structuration theory - in which actors exercise them repetitively to make the structure functions. Within these interactions, the roles and interests of certain actors were contested during the policy formation process. For example, it was the academic elite who reviewed government's initiative of the 2003 ITE draft, however, the decision on the ITE draft was discussed and finalised by the government in the form of the Department of Trade and Industry; Department of Information; and Department of Tourism Post and Telecommunication. Additionally, *PT Telkom* and *PT Indosat* also contributed some roles during the draft finalisation with the government. On the flip side, there was a lack of participation from CSOs and *BRTI*, the independent regulator, during the ICT policy formation process (Zulhuda, 2003).

Previously, chapter 3 examined the history of various governments' approaches in Indonesia towards telecommunication and Internet infrastructure development to provide the context for understanding the ongoing transformations of Indonesia's Internet strategies towards the Internet. These developments were heuristically divided into three periods: the early years of the Internet in Indonesia from 1983 and the 1989 Telecommunication Law, the 1999 telecommunication reform started in the 2000's, and the period immediately post ITE enactment in 2008.

As I have argued in Chapter 3, changes in the Indonesian government system, national economy and technologies have affected the early development of telecommunication and ICT policy as well as infrastructure. The government and *PT Telkom* dominated the development of telecommunication infrastructure and the management of telecommunication policies. Within the context of ITE, *PT Telkom's* status is state-

owned telecommunication company, with the Indonesian government holds more than 80% of major shares and the public owned less than 20% shares. This affected how internet infrastructure was rolled out during the early years of the Internet in Indonesia from 1983 to 1989. These circumstances caused the regulation and governance of Internet in Indonesia to overlap from 1983 to 2016.

For much of Indonesia's history as an independent nation, the development of telecommunication infrastructure and governance were intertwined and solely a matter of the state. Even when the large telecommunication arms of the government such as *PT Telkom* were privatised in the 1990s, they remained closely linked to the government, often too close to be entirely independent and act so. As actors within the ICT policy arena or structure, big business and the government in Indonesia have close and historical links. Not surprisingly, laws such as the Telecommunication Law of 1999 and ITE were most concerned with facilitating and regulating media for business purposes. Governance of the Internet was implemented from the top down and not especially concerned with issues such as the rights of the user, freedom of expression or privacy. In fact, up until the last days of Suharto's New Order government, the media remained subordinate to the strong rule of the regime.

Both the Telecommunication Law of 1999 and ITE in 2008 are prime examples of the ICT policy formation process described above. The Telecommunication Law of 1999 regulates mainly the development of telecommunication infrastructure and business practice in Indonesia, while ITE was originally intended to regulate online business practices as the number of Internet users in Indonesia expanded from the 2000s. Both laws have been used by the Indonesian government to regulate practices around telecommunication and Internet sectors. As ITE also regulates norms of online behaviour in transactions of e-commerce and in expressing opinions, this caused an overlapping of law within the Indonesian Criminal Civil Code where norms of behaviour in expressing opinions, particularly of defamation, are already regulated within the existing Articles 310 and 311 of the Indonesian Criminal Civil Code. Article 27 of ITE might therefore be duplicating an existing law due to a misperception of it regulates the abusive use of internet for doing criminal acts.

As explained in chapter 3, ITE had undergone a long process of its formation from 2003 to 2008, and after its enactment in 2008, ITE has encountered lots of protests and

concerns regarding ambiguous and imprecise formulation of certain Articles related mostly with online practices of expressing opinions.

In addition, since 2008, there has been an increasing volume of violations against the guidelines. In fact, according to a 2015 SafeNet report, there have been 137 cases of ITE violations since 2008, the majority of which were for defamation (Juniarto, 2014). Defamation, according to Article 27 verse 3 of the ITE is defined as the act of “[i]ntentionally and without the right distributing and/or transmitting and/or making offensive and/or defamatory Electronic Information and/or Electronic Documents accessible”. There is growing consensus among the public that such situations are the result of the ambiguity and vagueness with which the articles were framed and phrased within the ITE, especially those clauses concerning ‘prohibited acts’ (Djafar & Abidin, 2014). These are issues that I will deal with in some detail in chapter 5, but for this chapter I want to provide a broader context for ICT policy development and bring in the example of a neighbouring nation, Malaysia.

Like Indonesia, Malaysia is a postcolonial nation-state that gained independence in the mid-twentieth century. Whereas Indonesia has shed any notion of hereditary rulers and been working its ways towards democracy over decades, Malaysia has retained some parts of its monarchy and is governed as a federation. At the same time Malaysia is, similar to Indonesia, a developing nation with a young and Muslim-majority population. As such, Malaysia provides a comparative example of how differently ICT policy could have developed within similar parameters.

Looking at Malaysia’s experience in developing internet policy as an example is also appropriate because Indonesia and Malaysia share several other similarities. Starting with Internet’s arrival in the region in the mid-1990s, each country sought to implement ICT policy and move from a monopoly towards privatisation, but with quite different results. The system of government of Malaysia has provided conditions that are favourable for ICT policy development and their national economy. For example, Malaysia’s better established telecommunication infrastructures have allowed the nation to implement ICT policy more quickly than other countries in the Southeast Asia, with the exception of Singapore. Indonesia, in contrast, was still undergoing vast political changes during the latter part of the 1990’s and hence, still lacks adequate telecommunication infrastructure throughout the archipelago. Despite these

similarities, Indonesia has by far the greater challenge due to the much larger population (Indonesia: 261 million, Malaysia: 31 million) and challenging topography of its archipelagic land.

2003-2008: Draft, Deliberation and Enactment of ITE

As mentioned in Chapter 3, the years following *Reformasi* were full of democratic potential but also turbulent with frequent changes in Presidency and government from Habibie and Abdurrahman Wahid (Gus Dur) to Megawati. With each changes of government, what Giddens termed rules and resources available for the formation of ICT policy were different. Contest over coalition politics, the appointment of ministerial posts between the president and the leaders of coalition parties, and intense inter-ministerial bureaucratic competition over territory and resources created major coordination problems and affected a focus on economic policy (Datta et al., 2011, p. 67-69). The character of the post-*Reformasi* era under Yudhoyono administration contributed to the highly political and competitive style of relationship between the actors involved at the cabinet level over decision-making. As such, the post-*Reformasi* environment inevitably affected the relationship between agents within the telecommunication industry in Indonesia.

Like Indonesia, Malaysia also suffered the ravages of the Asian financial crisis of the late 1990s but it had the advantage of a stable government led by Prime Minister Mohamad Mahathir during this period. As its longest-serving Prime Minister Mahathir led the country from 1981 to 2003, weathering Malaysia's own *Reformasi* due to the imprisonment of his then deputy, Anwar Ibrahim. He also managed to steer the country through the Asian Financial Crisis. His Vision 2020 statement,³ first shared with the public during a talk delivered in 1991 also had time to take root. Although not without controversy, the Mahathir government saw the nation of Malaysia survive the crisis and thrive economically (Mahathir, 1991).

It was also a Mahathir enamoured of the possibilities of cyberspace who launched the Multimedia Super Corridor mega-project in 1996 (Leong, 2014). Hence, in contrast to Indonesia which experienced political turbulence since 1998 up to 2014 and change as

³ <http://www.wawasan2020.com/vision/>

a series of different prime ministers came in and out of office at the same time as the Internet became more commonly available and used, Malaysia was able to bear the onslaught that wider access and (mis) use of the Internet by the broader public brought to nations in Southeast Asia.

Looking at the Indonesian context, it was not until the year of 2004 when President Yudhoyono was first directly-elected and began his first term of government as the Indonesian president, the discussion of ICT potentials to enhance national economy was started. At this point in time, Indonesia was in transformation from a patrimonial administrative state to a patrimonial oligarchic state, where business-state relations were shifted. As Fukuoka (2012, p. 87) argues state-business relations were transforming into a distribution of patronage within Indonesian democratization period. So much so that during this period, business elites gained enhanced autonomy from the state and independent of bureaucratic elites. As a result, entrepreneurs-turned politicians were able to actively take part in the economic policy making as they gained direct access to state resources.

During this period, President Yudhoyono was acting under considerable pressure from the public and civil society to accelerate Indonesia's economic and social development. In 2008 the number of Internet users was just 25 million users (about 9% of Indonesia's total population then) but by 2012, it had increased exponentially by more than twice over to 62.9 million. Following this growth in the number of users was a corresponding rise in the access to and production of controversial online content (SAFEnet, June 2015), clearly indicating a need for better media literacy among the populace. In the meantime, as a consequence over the panic of controversial online content, the focus of Internet regulation shifted to include the filtering and blocking of objectionable content by law. The intent to control the type of content available on the Internet via law became part of the ITE. However, the original impetus for the ITE was to provide a guarantee of security for electronic business transactions.

As mentioned earlier, ITE is the law that regulates any online transactions and activities and any prohibited acts using ICT as a tool. It mainly regulates online business and information system but it also applies to anyone who commits cybercrimes. Before its enactment in March 2008, ITE had been developed over a long period of time. The draft of ITE was first prepared in 2003 by Directorate General of

Post and Telecommunication (DGPT) and the Department of Industry and Trade under President Megawati Sukarnoputri. By the time the draft was discussed with academics from *Padjadjaran* University, University of Indonesia, and Institute of Technology Bandung and delivered in 2005 to the DPR, President Yudhoyono had come into office. The ITE Bill was then deliberated in DPR together with the Minister of Communication and Information and the Minister of Law and Human Rights acting as representatives of the government. During the deliberation process in DPR, Yudhoyono created a task force in 2006 to undertake discussions of ITE. After extensive deliberations carried out from 2006 to 2008, ITE was finally enacted in March 2008 (Zulhuda, 2003).

Despite the turmoil of ITE implementation, the second-term of Yudhoyono government in 2010, made a major commitment towards ICT infrastructure development with the *Digital Indonesia* plan, which has since been implemented within the ICT National Roadmap 2010-2020 concurrent with the *MP3EI* (Indonesia Economy Development Expansion Acceleration Masterplan). Along with this commitment, more site-specific, community-based ICT programs such as *Bandung Digital Valley* in 2011 and *Jogja Digital Valley* in 2013 also emerged as promising moves towards a digital economy.

The case of Malaysia differs in that it responded to the arrival of the Internet and implemented a policy on telecommunications and broadcasting much more quickly than Indonesia. The Malaysian equivalent of the ITE is the Communications and Multimedia Act (CMA), which was enacted in 1998 and came into force on 1st April 1999. It came into being partly in response to the Malaysian government's mega-project, Multimedia Super Corridor begun in 1996, which was designed to obtain the status of global centre and regional IT Hub for Malaysia. The CMA governs procedural, economic, technical, consumer and social regulations within three industries which used to be separately regulated namely: the broadcasting, telecommunications and IT industries (Hussein, 2000, pp. 79-80). Convergence between the three industries and the necessity for an independent supervisory authority that would strive for self-regulation for the industries were the main reasons this Act emerged. The CMA 1998 emphasises several areas such as a high technical standard of communication and multimedia industry, consumer satisfaction by maintaining

service quality and supporting competition activity, and content prohibitions which could preserve Malaysia's cultural identity (Hussein, 2000, p. 85).

According to Xue (2005), the basic principles of transparency and clarity; more competition and less regulation; flexibility; bias towards generic rules; regulatory forbearance; emphasis on process rather than content; administrative and sector transparency; and industry self-regulation are reflected within the CMA 1998. Although there are several actors involved in formulating national information policy and strategy in Malaysia such as the Ministry of Energy, Communications and Multimedia, The Prime Minister's Office and the National Information Technology Council (NITC), the dominant actor is the Malaysian Communications and Multimedia Commission (MCMC). Through MCMC, Internet content and traffic are regulated under the principle of self-regulation by the industry in accordance with government regulations (Xue, 2005, p. 243).

According to Tisch (cited in Salman, 2009, p. 5) in Malaysia, ICT arrangement on e-government is formed to translate political will into action among stakeholders which includes the government, the business sector and civil society groups. The Malaysian Communications and Multimedia Commission (MCMC), being the nation's key regulatory body, is currently playing a key role in creating and setting mandated standards and policies to address conflicting principles.

Xue (2005, p. 244) argues, Malaysia's approach towards ICT development is a collaborative practice between the public and private sectors in developing infrastructure and adopting a policy of competition towards the telecom market. Malaysia's Internet policy is intended to encourage the development of content and applications, while relying on industry self-regulation to control harmful content. Although Malaysia was considered successful in its response to ICT development through the enactment of the CMA 1998, the Act also introduced concerns with regard to the new licensing scheme and content requirements for Internet Service Providers.

The Malaysian Bill of Guarantees states that the Internet will not be censored in Malaysia in order to realise Malays vision as a major global ICT (<https://www.mdec.my/msc-malaysia/bill-of-guarantees>). This does not mean that anyone can distribute illegal content with impunity and without regard to the law.

Actions can be taken against contents that are deemed seditious, defamatory or contravene the Official Secrets Act 1972, the Defamation Act 1957 and the Sedition Act 1948 (Salman, Choy, Mahmud, & Latif, 2013, p. 13). Malaysia as a multi-ethnic and multi-religious society is very sensitive to anything that may jeopardise the peace and harmony of the country. The rights to express alternative views on nation building facilitated by new media in Malaysia has been challenged by the ways Malaysian government interact with its citizen in a context of telling the truth or acting patriotic. As Leong (2016, p. 156) argues this condition is the “result of how the entangled historical understanding of how nation, media and technology relate to each other within Malaysia’ social imaginary are in dispute with their contemporary interpretation”.

From the brief comparison between Malaysia and Indonesia’s approaches towards ICT policy development above, it could be suggested that the frequent change in government during the ICT policy formation process in Indonesia had several effects. The first of which are the change in actors (government) and the rules and resources brought to the process. The changes in the Indonesian government from Suharto to Habibie to Wahid to Megawati and to Yudhoyono government had brought certain practices and resources that exercised and contested within the structure of ICT policy development process in Indonesia. In contrast, although it suffered broadly similar external (financial crisis) and internal (*reformasi*) disruption, Malaysia’s ruling party, *Barisan Nasional* (National Front) and Prime Minister provided sufficient stability for ICT policy to be developed and implemented relatively swiftly.

There are two other points of note in what is described above. The first is the absence of consultation with CSOs in the Indonesian instance particularly when compared to the Malaysian example; the second is the omission of broader dissemination of the Bill under discussion to the Indonesian public. Both of these meant that public participation in the process was limited to the elite in academia and government, bypassing the feedback and input of ordinary Indonesians. Crucially, although the Malaysian ICT policy formation process also largely omitted public participation, the undertaking by the government not to censor the Internet in the 1998 Bill of Guarantees (<https://www.mdec.my/msc-malaysia/bill-of-guarantees>) completely changed how the

online environment developed in the country from that point onwards (see Leong 2014 for more details).

If we view the absence of public participation through the lens of structuration theory, then it is possible to say that an actor (the public) essential to the success of the structure and the social practices that ensue from it was conspicuously absent. I discuss the consequences of their omission for Indonesia further in chapter 5 but it is sufficient to note at this point that after its enactment, the ITE had faced judicial reviews twice in 2008 and 2009 and encountered lots of protests and concerns regarding ambiguous and imprecise formulation of certain articles. This has led eventually to the revision of ITE that finally began in late 2016 under President Joko Widodo, thus introducing a raft of different actors in the process of ICT policy formation.

The revision of ITE in 2016

From 2008 to 2013, attempts to revise ITE met with silence although there was a steep increase in infringements against ITE during that period. Article 27 of ITE, which relates to illegal Internet content, was badly in need of more detailed explanations that were not forthcoming from government or ministerial regulations as required. Exactly what comprised illegal content was not clear despite the increasing access and capability of users to activities ranging from pornography and gambling to racial vilification. Small wonder, then, that a report from ELSAM (Institute for Policy Research and Advocacy) concluded that regulating Internet content using ITE is not appropriate as the law opposes the right of freedom of expression (Djafar & Abidin, 2014). In lieu of greater clarity about how ITE could be properly implemented during that five-year period, it was left to the Ministry of Communication and Information to regulate Internet use.

By 2015, APJII (Indonesian Internet Service Providers Association) reported the number of Internet users to have reached 88.1 million of users (Asosiasi Penyelenggara Jasa Internet Indonesia & Pusat Kajian Komunikasi Universitas Indonesia, 2015). Amid the escalating number of breaches against ITE from 2012, the government's reaction towards the revision of ITE remained rigid (Djafar & Abidin, 2014). Still, as the acting coordinator of the law, the Ministry of Communication and Informatics

(MCI) attempted to offer some forward momentum by formulating some policies on filtering multimedia content and blocking procedure from 2010.

The first block put up by the MCI, for example, was to prevent a video of indecent behaviour between an Indonesian actress and a male band member from circulating online within Indonesia (Hasyim, 2015). Blocking was instituted by MCI through a TRUST Positif + database, which contains a blacklist of websites that carry illegal content (mostly pornography). The list is used as a reference for ISPs who are responsible for blocking all content listed in the TRUST + database. If ISPs refuse to do so, their business licenses can be revoked by the government (Ministry of Communication and Information, 2014). Due to a lack of transparency and imprecise blocking mechanism, several websites not related to illegal content were also inadvertently blocked.

At the same time, several other overlapping laws can also be used to regulate online content in Indonesia. There is, for example, a Law of Pornography that extends to online content considered harmful to social norms whereas online content that disturbs public interest is within the remit of ITE. Objectionable journalistic content falls under the Press Law, while the Law of Copyright regulates intellectual property of online content (Djafar & Abidin, 2014). Considering the importance of citizen journalism to the democratisation of Indonesia, the overlapping laws could affect the public's right to express opinions and voice critique for government.

As with Indonesia, the laws governing defamation and sedition overlap with the regulations surrounding Internet use in Malaysia. The Malaysian government has taken a double-pronged approach to direct the type of content Malaysians can post, read and share online. Firstly, it has revised and broadened laws governing actions offline to include online acts. For example, the Sedition Act originally enacted in 1948 was revised in 2015 to include within its purview the 'propagation' of seditious publications by 'electronic means' (Leong & Lee, 2016). Secondly, it has reinterpreted laws governing the Internet such as section 23 of the CMA. In one example, using the Act to block access to online sources that share information the government considers harmful.

Without delving into the various political motivations behind their actions, I want to note here that control of online content has been achieved in this instance in Malaysia via revising and reinterpreting laws, quite swiftly, in comparison to Indonesia. Whether the heightened pace of policy (re)development is actually a good turn of events for Malaysia is an issue I cannot address in any length here but it is sufficient to note that the complexities of overlapping laws and authorities Indonesia policy makers labour under is not exceptional. At the same time, while the discourse of freedom of expression is now common across Southeast Asia, it is vital to recall that mass media, for which communication and ICT policies were first developed, remain subordinated to national developmental objectives in many countries in the region such as Vietnam and Singapore.

To return to the discussion on Indonesia, due to a gap in internet filtering regulations and misuse of internet services linked to a low level of media literacy, a policy for pornography content filtering and blocking has actually been initiated by MCI since 2008. The draft of ministerial regulation of multi-media content was to be legalised in 2009 by MCI. This draft was based on article 40 verse 2 of ITE and gave the government the authority to censor or block internet content. A plan to form a body of internet censorship emerged in 2010 but society resisted (Eddyono & Anggara, 2014, pp. 6-9).

In 2012, MCI attempted to change the name of multi-media content draft into a draft of reporting procedure or internet content report but it too failed due to public protest. A year later, a draft of illegal sites management was going to be authorised together with the legalisation of ministerial program, TRUST Positif + but it took until 2014 before it was made official by ministerial regulation no 19. However, the general public were still very much against the program because the right to freedom of expression and opinions is guaranteed in the national constitution. The implementation of TRUST Positif would be a violation of their constitutional rights and freedom of expression on the net (Hasyim, 2015).

Above examples of government's attempts to implement certain regulations to regulate Internet content were examples of structures in Giddens' framework, which were not successful to be preserved by the government. This is due to the role of public (CSOs) as the other actor who contested government's attempts to produce certain

policies within the structure of Indonesian Internet policy development. Borrowing Giddens' definition of "structure is both the medium and outcome of an action", the draft of ministerial regulation of multi-media content proposed by the government in 2009 and the draft of reporting procedure in 2012 had created a medium for producing, facilitating and maintaining certain practices within society. However, as these two drafts were failed to be legalised due to the resistance of society, these two drafts can be observed as the structure that served as the outcome of an action as well.

Verse 3 of Article 27 criminalises anyone who "[i]ntentionally and without the right distribute and/or transmit and/or make offensive and/or defamatory Electronic Information and/or Electronic Documents accessible" ("Law of Electronic Information and Transactions,"). Due to the number of infringements against this article and the severity of penalties for them (up to six years' imprisonment without trial), Article 27 of ITE has become a focal point of policy revision among CSOs. For example, *Satudunia* recommended in its report (Cahyadi, 2015) that revision of ITE should see a separation of Internet security and content regulations, an independent regulator of Indonesian telecommunication and ICT, and public interest priority over business interest in ICT infrastructure and access in rural and remotes areas.

The lack of clarity on how different levels – infrastructure, access and distribution, content and activities, and literacy – of internet regulation proposed by the government also has severe implications for social practices in Indonesia. Specifically in ITE post-implementation review process, concern over some activities undertaken on digital platforms by users have led to the development of programs and campaigns by CSOs directed at the revision of ITE. Social practices conducted by CSOs towards ITE revision process interrelate with communities' support are being contested with government's initiatives in the structure of ITE post-implementation review process. These will be discussed further in Chapter 5.

The ongoing conversation surrounding the revision of ITE among CSOs and general people were articulated in their unrelenting campaigns and activities towards the new government system in 2014. CSOs and general people looked forward to the newly elected President Jokowi to move the revision of ITE forward in *Prolegnas* 2015. After a period of eight years, the revision of ITE was tabled on the agenda of the Indonesian National Legislation Program (*Prolegnas*) for 2015 and announced by the President

Jokowi (Poetranto, November 15, 2014). This was followed on 22 December 2015 by a draft revision signed off by President Jokowi and submitted by the Minister of Communication and Information to the DPR (Ministry of Communication and Information, 2015a).

In March 2016, the commission 1 of DPR conducted a public hearing of ITE proposed revisions, which was attended by the government, members of political parties, and public (CSOs and academics). One result of this hearing was the establishment of a task force consisting of DPR members and the Ministry of Communications and Information, which was placed in charge of discussing the revisions with DPR members and bringing ITE revisions into the legislative session for approval by June 2016. A second hearing took place in April 2016 in which the Ministry of Communication and Information approved the proposed revisions to ITE regarding the ‘hate speech’ content in Article 27(3) with amendments to penalty and case status. The harsh 6-year penalty was shortened to 4 years and a ‘*delik umum*’ (general offense) case status was changed into a ‘*delik aduan*’ (a report should be lodged by a victim) status. In practice, this changing status means as a power shifting of putting someone directly into a jail due to a law’s violation (Ministry of Communication and Information, 2016).

Conclusion

Compared to Malaysia, Indonesia was slow to initiate a specific law for regulating the ICT and Internet. This meant that technologies have matured and the pace of change have accelerated so the task has become much more complicated. In the case of ITE, ICT policy formation process has taken a long 5 years (2003-2008). Within the process, the government and the big business have played significant roles in drafting ITE but the public has only had limited input. The voice and interests of ordinary Indonesians general people was represented by a small number of the educated elite in academia. Although it is not possible to link the shortcomings of ITE only to the scant public input, the glossing over of this essential part of policy making process has most certainly not helped to create confidence in public policy.

However, it needs to be emphasized the while Indonesia has undergone significant political turbulence during the crucial period of the Internet’s early development in the

nation, Malaysia was ruled by Prime Minister Mahathir from 1981 to 2003 and had been governed by same political coalition since its independence from the British. The political stability of Malaysia government has provided conditions that are favourable and important for its success in ICT policy development and its national economy. These conditions which did not occur in Indonesian context.

The next chapter will specifically focus on the case study of ITE, what issues that have arisen post-implementation since 2008 to understand the flaws with the policy, and how public provide feedback for and participate in ITE review process.

Chapter 6. Case study of ITE (2008-2016)

Introduction

Chapter 5 explained the process of policy formation in Indonesia with a focus of ITE formation process from 2003 to its enactment in 2008. It also briefly described the major issues with ITE post its enactment in 2008 and the revision process that culminated in 2016. In order to place the Indonesian development of ICT policy within the broader context of the Southeast Asian region, the case of Malaysia was also introduced as one that began with fairly similar parameters. It provided some important insights into what was achieved by a neighbouring country in terms of ICT policy and the political and economic systems that made the crucial difference.

Beyond the ongoing transformation of the Indonesian ICT and Internet policies, ITE has been the only law in Indonesia that regulates social and business practice on the Internet since 2008. ITE is the case study in this thesis because of its significance within the Indonesia ICT policy and the long lead-up to its enactment. ITE has also been a major cause for challenges in online activities. A report made by SAFEnet in 2016 (<https://safenetvoice.org>) showed, there have been 137 cases of netizen violating ITE since 2008. For this reason, ITE is regarded by some organisations such as the Alliance of Independent Journalists (AJI), the Legal Aid Institute for the Press (LBH Pers), and the Indonesian Legal and Human Rights Aid Association (PBHI) as a law that restrains the right of Indonesian citizens to express their opinions freely online and, thus, to critique the government (Jakarta Post, 15 September 2008).

The objective of this chapter is to use the issues that have arisen post-implementation to understand the flaws with the policy, its implementation and review. The investigation tries to explain how the public's participation during this period, via the CSOs, provides feedback to the ITE implementation review process. Consistent with earlier chapters, I focus on three CSOs namely, *Satudunia*, *Medialink* and *ICTwatch*. The analysis is based on data drawn from face-to-face and follow-up e-mail interviews with key leaders from these three CSOs and document examinations. Additional

information is collected from other CSOs like FDD (Digital Democracy Forum), ICJR (Institute for Criminal and Justice Reform) and ELSAM (Institute for Policy Research and Advocacy), as they provide additional support for the ITE review process. The interviews and document examinations were conducted to gain further insights of ITE review process and to form a discussion on later section within this chapter on CSOs' contribution and involvement in ITE implementation and review process.

In contrast to when ITE was drafted, discussed and implemented, the inclusion of the public (via CSOs) and its concerns in the review process significantly shifts the focus of the policy from e-commerce to issues such as privacy and freedom of expression. In structuration theory parlance, the role of the public as an actor in the ICT policy formation process is bolstered, making the process much more inclusive and hopefully, comprehensive. It also fits within the notion of democratic governance which was discussed earlier in Chapter 2. In investigating the process of ITE implementation review and responses from the public, it is important to observe the interactions and relationships among parties involved in the process of ICT policy development in Indonesia.

Within this thesis' use of Giddens' structuration framework, the ITE policy is the structure within which the Indonesian authorities, whereas the government (the Ministry of Communications and Information), big business (*Telkom* and *Indosat*), and civil society organisations (CSOs) observed in this thesis are the actors. The interactions that occur between these actors form a structure of ITE policy formation process. In the course of these interactions, all three actors draw on rules and resources such as the discourses of democracy, rights to expression and to critique government, cultural notions of acceptable norms and taboos as well as ingrained media and policy formation practices from the Suharto era.

This chapter extends from the policy formation process analysis carried out in Chapter 4 into the examination of the flaws identified in ITE and the CSOs' efforts to intervene in the ITE revision process in DPR (The House of Representative). By understanding what flaws are identified in ITE, it provides a medium of relationships between the state and its society in a structure of policy-making process. While CSOs' responses towards ITE review process serve as the outcomes of what practices occurred at society level as they interact later with other practices from other two actors and

provide feedback within policy making process. These functional features of a structure as the medium and outcome of an action are consistent with Giddens' concept of duality functions of structure that allows for these very different yet inter-related practices and conditions to be taken into consideration. As Giddens says, "the structural properties of social systems do not exist outside of action but are chronically implicated in its production and reproduction" (Giddens, 1984, p. 376).

Since the enactment of ITE in 2008, questions have been asked about its definition of what is legal content online and the severe penalties potentially meted out to anyone found guilty of violating them outlined in Article 45. Three articles in particular: Article 27 on defamation; Article 28 on hate speech or blasphemy based on ethnic, religious, racial and inter-group relations and; Article 29 on online threats are considered the most problematic (Djafar & Abidin, 2014). Overall, the main issues with ITE can be broadly explained as overly broad definitions of what constitutes information and communication, vague wording of violation and threats, and a duplication of extant laws leading to the likelihood of complications (Maskun & Khairunnisa, 2016).

Due to the overly broad and vague wording contained within ITE, more and more instances of violation against it have occurred since 2008, nearly doubling from 8 in 2012 to 14 in 2013 and 36 in 2014. At the end of 2015, the number of cases had reached a total of 118. Most of the cases were related with violations of defamation Article of ITE (SAFEnet, June 2015). As a result, several CSOs and individuals have been advocating for the revision of ITE soon after its enactment in 2008.

For example, in 2008, the CSOs *Satudunia* and *ICTwatch* initiated a request for a separate judicial review on Articles 27, 28, 29 and 45 within this law but the request was rejected by the Constitutional Court because according to head of judges, "these articles are not contradicted with democracy and human rights' principles". He also said that Article 27 is meant to preserve the nation's balance and to prevent the technical and legal rules in an online system (Jakarta Post, 15 September 2008). In the same year, a review was conducted by Narliswandi Piliang, a journalist with the publication of the article entitled, *Hoyak Tabuik Adaro dan Soekanto* (literally translated "Rocking the box of Adaro and Soekanto") on several mailing lists in 2008 (<http://international.ucla.edu/institute/article/100728>). The defamation case started

when Narliswandi allegedly posted the article on the website presstalk.info. Narliswandi said Alvin Lie, a legislative member from the National Mandate Party, had received some money related to a transfer pricing of coal trade case between *PT Adaro* and *Coaltrade Services International Pte Ltd*, Singapore. Alvin Lie's action might influence the policy making in the House of Representatives (DPR), so that DPR would cancel a probe into questionable circumstances surrounding the company's initial public offering. The article was later reposted on several websites, and distributed to the e-mail list of *Kompas* Readers' Forum. However the review was not accepted by the Constitutional Court for the same reason as previous (Jakarta Post, 14 November 2008).

From 2012 onwards, due to the lack of success at revisions to ITE, some communities and coalitions such as FDD (Digital Democracy Forum), ID-CONFIG (Indonesian CSOs Network for Internet Governance), KITA (Internet without fear coalition), and SIKA (Friends for Fair Information and Communication) were established specifically to help the Internet-using public defend their rights to make the most of the Internet. The establishment of these groups was a response to less support from government towards ITE revision process and a contribution to enhance Indonesians' understanding and ability in utilising the Internet. FDD was formed in 2012 as a community effort in digital democracy movement. Similarly, ID-CONFIG was formed in 2012 as a joined secretary in exchanging information among a number of CSOs in Indonesia who have concerns on internet governance and online freedom of expression. Meanwhile KITA and SIKA were coalitions among other older organisations which have given assistance for ITE victims such as ICJR, ELSAM, LBH Pers, ICTWatch and SAFEnet and formed in 2015 to heighten the movement towards ITE revision process (SAFEnet, June 2015). FDD, ID-CONFIG, KITA and SIKA are not part of this thesis focus directly because they did not involve in ICT policy development since the beginning and they are not relatively permanent as organisations, although they had supported the ITE revision process since 2012 and focused on improving Indonesians' capability in understanding and using the Internet.

One of the issues that has arisen is the apparent lack of digital and media literacy and an understanding of the online environment held by Indonesians. According to Bain and Company (22 May 2017), more than 230 million consumers in the Southeast Asian

region are “online engaged consumers”. And in its 2017 report on the digital landscape in Southeast Asia, *We are Social* reveal that of the 132.7 million Indonesians (51% of population) who are now online, 47 million use their mobile phones to access the Internet (We are Social and Hootsuite, 2017). However, while access to and the volume of content continues to grow in Indonesia, there has not been a corresponding growth in media literacy leading to ever more urgent need to police online content (Asosiasi Penyedia Jasa Internet Indonesia, 2017).

Tensions between laws designed for the policing of content and those that are designed to protect the right to freedom of expression sometimes clash as the content policing can be used to silence dissent, dissatisfaction with and critique of the powers-that-be. While governments and business are focussed on policing norms to maintain law and order, the public are more concerned with their ability to use the Internet to its fullest potential. Counter actions by CSOs have taken several forms. For example, in the face of attempts by the MCI to manage illegal content on the net by using blocking and filtering software tools from 2010, CSOs like *Satudunia* and *ICTwatch* have been trying their best to protect freedom of expression and democracy in Indonesia. Their efforts include the campaign on Internet governance led by *ICTwatch* since 2012 (interview with Ronny, from *ICTwatch*), the declaration on ID-IGF (Indonesia Internet Governance Forum) in 2012 (Banyumurti, November 2, 2012) and the representation at the 8th Internet Governance Forum in 2013 (Parlina, March 2, 2013).

Other CSOs have focussed their energies on working together to educate and inform Indonesians on the threat ITE, as originally worded, poses to unknowing users. These efforts include the ‘Netizen Prison’ campaign to highlight the threat of imprisonment if opinions expressed online are deemed illegal, blasphemous or categorised as expressing hate towards certain people or groups held by SAFEnet on 9 November 2014 (SAFEnet, June 2015), a meeting on Indonesian digital democracy in 2014 (Forum Demokrasi Digital, December 16, 2014), a dialogue on safeguarding democracy and ITE revision in 2015, and discussions on netizen’s roles in guiding democracy in Indonesia and ITE emergency status’ among CSOs in 2015 (Forum Demokrasi Digital, November 11, 2015).

A draft revision was signed by President Jokowi and submitted by the Minister of Communication and Information to the DPR on 22 December 2015 (Ministry of

Communication and Information, 2015a). The latest information regarding the process of ITE revision comes from Commission 1 from DPR, which conducted a public hearing of ITE revision. This first hearing was attended by members of the government, political parties and the public (CSOs and academics). A task force consisting members of political parties in DPR whose duty is in charge of ITE revision was established as a result of the hearing. The task force discussed the revision with DPR members and aimed to bring ITE revision into the legislative session to be approved in June 2016.

The enactment of ITE in the Indonesian communication system and its influence in society and the democracy consolidation in Indonesia reflect the different experiences of the actors within the Indonesian ICT policy development. There are at least three observable facts that emerged from the fieldwork conducted for this thesis in Jakarta in 2014 and 2015. First, the discourse from the Indonesian government of digital economy Indonesia is increasingly influential in driving policy. For example, starting from 2014 Jokowi's administration has made the ICT sector one of the 5 top priorities of Indonesian national programs, and started to implement 4G LTE technology in 2015. Jokowi's leadership also promised greater momentum towards a digital revolution to support Indonesian digital economy (Amirio, 12 December 2015).

The Indonesian government has issued a roadmap of Indonesia's e-commerce through the Presidential Regulation No. 74 of 2017 on E-Commerce Road Map for the Year of 2017-2019. The roadmap is designed to be a guide for the central and regional governments to establish policy and an action plan to accelerate e-commerce. It is also expected to provide guidance for stakeholders in the organization of e-commerce activities. There are eight major components to the roadmap: funding, taxation, consumer protection, education and human resources, communication infrastructure, logistics, cyber security and the implementing organization. The roadmap has the goal of creating at least 1,000 techno-preneurs and to generate at least \$10 billion annually by 2020 (Amin, 11 February 2016). This launch represents the commitment from Jokowi's government to support better access and innovation for small and medium enterprises to narrow development gaps in Southeast Asia and establishing cooperation with leading technology companies such as Plug and Play, Google, Facebook, and Twitter (Diela, 16 February 2016).

Second, there is a divergence in the objectives and pathways selected towards these objectives between big business and CSOs in ICT development in Indonesia. For example, the business event I attended in 2015 in Jakarta, less participation came out from CSO. There was a symposium on *National Security and Broadband Plan* in that event where no CSOs' members were involved. Government and big business participation were mainly observed in this event. However, a few years earlier in 2013 at the IGF event in Bali, much more interaction between big business and CSOs took place. Clearly, participation from the public in the form of CSOs is possible but it tends to vary with the nature of the event and the organisers.

As Ronny from *ICTwatch* says,

The IGF is an annual United Nations (UN) event, which is designed as an open and inclusive forum for discussing issues of Internet policy and the role of multi-stakeholders. The event's objective was to be a neutral space for governments, businesses and civil society to meet and discuss the central issues and challenges of Internet policy. The IGF also promotes a democratic, bottom-up and participatory platform (interview on January 27, 2014).

One example of how CSO design programs to improve media literacy among the populace is *ICTwatch*'s production of the social media videos titled, *Asadessa* and *Linimasa* (<http://asadessa.ICTwatch.id/>). These videos are part of *ICTwatch*'s program for advocating 'Internet rights'. Up to three videos were produced for dissemination among to communities across Indonesia to help them learn about and pick up the skills required to use ICT technologies and retrieve information confidently.

One observation that emerged from my fieldwork is the growing development of ICT and media literacy in Indonesian communities supported by CSOs' programs. Take for example *Medialink*'s partner: a learning group community in Lumajang, East Java. *Medialink*'s program was to provide assistance for this group to obtain any information about the National Health Insurance program using ICT technologies. The group's members learned how to search and select for information they need from government website and social media and use the information to address their health insurance needs.

Main problems in ITE

This section seeks to explain the issues that have arisen with ITE post-implementation. The aim is to understand the flaws with the policy, its implementation and review. I concur with Juniarto (2012), who argues that the main flaws within ITE come from Articles 27, 28, 29 and 45 in the legislation. Specifically, Juniarto (2012, p. 97) points out that:

[t]he problem in Article 27 of defamation lies in its formulation. It is too broadly defined, making it difficult to differentiate between public and private communication. Because of this, personal communications like SMS, e-mail, BBM [Blackberry Messenger], and Path are open to threats from this law. Moreover, the formulation of the types of defamation in Article 27 is not clear enough. Existing Articles 310 and 311 of the Indonesian criminal code already regulate certain kinds of defamation. Article 27 might therefore be duplicating an existing law.

Juniarto also contends that the term ‘information’ in article 28 is too broad and should be better broken down into specifics such as pamphlet, news, speech, and broadcast that contain blasphemy. In addition, Article 29 of ITE has a subjective meaning of violation and frightening threats that might cause uncertainty in its interpretation (Juniarto, 2012). All of the above is compounded by the severity set out in Article 45 of the same Act, which states that anyone who infringes Article 27, 28 and 29 can be arrested immediately and subject to six years’ imprisonment without the rights to defend. The six years’ imprisonment has required the law enforcers like the police, the public prosecutor and the court to place an offender in to custody right away. Whereas according to the Indonesian Criminal Civil Code (KUHAP), the minimum requirement of a person who is against the law and can be arrested immediately is five years penalty or more (Eddyono, 2014).

Vagueness

Article 27 verse 3 of ITE criminalises users who “[i]ntentionally and without the right distribute and/or transmit and/or make offensive and/or defamatory Electronic Information and/or Electronic Documents accessible” (“Law of Electronic Information and Transactions,”). Defamation under the Indonesian law is governed by the

Indonesian Criminal Code under Chapter XVI, Articles 310 up to 321, which covers six types of defamation. Defamation is also governed under the Indonesian Civil Code, Articles 1365 and 1372. According to both laws, the term ‘defamation’ is used to encompass both slander and libel. It involves the issuance of a defamatory statement that causes a person to suffer harm. In addition to the Indonesian Criminal Code and Civil Code, acts of defamation are included as prohibited activities under Law No. 11 of 2008 regarding Information and Electronic Transactions (ITE) (Human Rights Watch, 2010, pp. 16-19).

Theoretically, defamation law aims to make a balance between protection of individual reputation and freedom of expression. However, defamation laws are often used in practice as a means of chilling speech. Like almost all other laws, defamation is defined within jurisdictions that are based on geographical areas. The practice of expressing opinions on the Internet, which is trans-border in nature and can be treated as defamation, poses a challenge to the existing laws. In some countries, under civil law jurisdiction, defamation is treated as a crime rather than a civil wrong. Defamation law is supported by the international standards on freedom of expression and the protection of reputation developed since 2000 by the international human right bodies such as the United Nations Human Rights Committee. Article 19 of the International Covenant on Civil and Political Rights is one example of the international standards often referred in a court, which is also the result of CSO’s work in London in 2000 (Collins, 2010).

Article 27 of ITE does not clearly distinguish between the various types of defamation. This is problematic because certain kinds of defamation such as slander and libel are already regulated in the existing Articles 310 and 311 of the Indonesian Criminal Civil Code (KUHP). The lack of clarity in Article 27’s definition of information, communication and kinds of defamation, therefore, opens the law up to misinterpretation. To date, Article 27 has been employed as an instrument to place individuals in prison because they critique other people, institutions or government. Without a clear idea of how Article 27 is to be applied, the individual’s right to express their views or opinions on certain things is restricted. Therefore, an improvement in Article 27 is vital.

According to SAFEnet report in 2016 (<https://safenetvoice.org>), there have been 137 cases of netizens violating ITE since 2008. Among the cases, there have been at least 74 individuals litigated under this Law. A telling majority of 92% of the cases were to do with online defamation. The cases were significantly increased in 2015 in which there were 60 cases related to online defamation from January 2015 through April 2015 alone. The current trends indicate at least four additional cases per month (<https://safenetvoice.org>).

Additionally, because Article 27 does not define what type of information and communication it covers i.e. whether they include public or personal communication, this has led to personal communication like SMS texts, e-mail and chat messages to be subject to this law. Probably the most known example of a breach of Article 27 verse 3 is the case of Prita Mulyasari. A working mother of two small children, Prita was accused of defaming the Omni International Hospital because she shared a piece she wrote about the disappointing service she received there with a mailing list (Wisnu & Wulandari, 5 June 2009).

Prita was placed in pre-trial detention without warning in May 2009, on the basis of the ITE law a couple months after she sent her friends the now infamous email. She was imprisoned for three weeks and after being put on trial several times, she lost in fight with Omni International Hospital and was penalised 204 million rupiah. This was a sum approximately equivalent to USD 15,000 or 287 times the average monthly income of Rupiah 710 495.5 in a Non-Agricultural Low Income Level Urban Household in 2008 (Statistics Indonesia, 2014).

A month later in June 2009, she was tried and acquitted by the district court of Tangerang. A year later in September 2010, Prita was relieved of the fine of 204 million rupiah by the Supreme Court. However, in June 2011, Prita was sentenced to 6 months in prison after the prosecutor's appeal. She successfully fought for a judicial review at the Supreme Court at which she was subsequently acquitted in September 2012.

The case is renowned as one of the earliest cases of defamation on the basis of the ITE and Prita's lengthy (5 years) struggle to fight for her freedom. That her plight struck a chord among the Indonesian public was attested to when the Facebook campaign,

Coins for Prita, managed to collect 650 million Rupiah in support of her (Jakarta Post, December 19, 2009). In the process the campaign not only collected millions of rupiah to help her, it also attracted hundreds of supporters and made Prita a national icon. Prita's case is an example that illustrates well the shortcomings in Article 27 of ITE on the issue of what kinds of online information comprises defamation. Although Prita was eventually found not guilty based on the decision of the Constitutional Court in 2012, she had by that time been detained for 20 days and suffered from the contradictory decisions made by different courts in Indonesia. Despite this, Prita's 5-year battle with the authorities over perceptions of defamation and the support she received demonstrated how public opinion and support can overcome the inertia and intractability of authorities.

Looking at the above example, there are several related principles that remain debatable such as the principle of transparency, accountability and receiving complaints and critics. From the 137 cases that have occurred since 2008, personal complaints and critics are the most common reasons of cases for online defamation. One wonders if Prita's complaint would have had a similar reception if made against a smaller company instead of a public-listed corporation that in 2016 declared a gross profit of 14,18 billion rupiahs (OMNI Hospital, 2016). Online defamation cases such as Prita's also illustrate the fact that an authoritarian style of public officials in managing complaints and critics still pervades in Indonesia.

The reactions and responses to the vagueness of Article 27 such as the accusation against Prita, her struggle to clear her name and the support she has received from the public now form part of the resources used in the formation of the structure of ICT policy. Public support for Prita had given her capabilities to fight for her rights and also to ensure her judicial process was fair and free from certain interests. The concept of resources in Giddens' theory of structuration is fundamental because resources provide individuals with dual capabilities, namely allocative and authoritative resources (Giddens, 1984, p. 258). These resources establish a structure of domination and facilitate individuals as agents to generate different types of power within kinds of society. Giddens propose three kinds of structure in a social system: signification, legitimation, and domination. Domination is an element in structure, which is concerned with how power is applied, in particular in the control of rules and

resources. In the case of Prita, Article 27 within ITE was clearly part of a structure of domination. How the law was brought to bear on Prita's online complaint and what transpired afterwards bear out Giddens' view on the duality of structure, where structure is both "the medium and outcome of the conduct it recursively organizes" (Giddens, 1984, p. 376).

Although it is customary in everyday life to think of resources as positive in that they are reserves on which individuals can draw, resources within structuration theory can also be negative.

Broad definition of information

The second flaw of ITE comes from the vague wording of violation and threats in Article 28, which deems it a crime to "[i]ntentionally and without the right disseminating information intended to incite hatred or hostility towards an individual and/or specific groups of people based on their tribal, religious, racial, and intergroup identity" ("Law of Electronic Information and Transactions,"). Article 28 also overlaps with Article 156 of the Indonesian Criminal Code and Law No. 40/2008 of Ethnic and Racial Discrimination as it covers the same ground. Using this Article 28, it is possible for people who have different beliefs and express their differences to be seen as committing blasphemy towards other beliefs. For example, the case of Sandy Hartono and Sebastian Joe who were alleged to have offended under Article 28 because of their posting in social media which are related to a religious discrimination (Eddyono et al., January 2016, p. 8). The unclear formulation of 'hate', 'hatred and hostility' in Article 28 might imperil people's freedom of expression and opinion.

There seems to be an extension from offline definitions of crime to online environments because this Article regulates prohibited expression manifested in speech, not based on conduct. In practice, the actions of hate dispersal in their offline forms are mostly conducted between groups which fight against each other based on religious differences. Due to a general arrangement of hate dispersal action within Article 28 verse 2, it is important to note that this Article is potentially a threat for people to express their opinions about certain beliefs and religious differences in online media. According to a report from SAFENET, there were at least 4 cases related to the violation of Article 28 verse 2 from the year of 2012 to 2014 (Juniarto, 2014).

Hostility and intimidation cases based on their tribal, religious, racial, and intergroup identity have been given a serious attention in Indonesian society. Within ITE, this matter is articulated in Article 28 verse 2. The examples of Sandy Hartono, Sebastian Joe and Alexander Aan highlight how hatred and intimidation are considered as vital infringement within ITE. All three accused were deemed to be at fault and sentenced to between 2 to 6 years. Sandy Hartono was found guilty of Article 28 infringement for creating a fake Facebook account and posting images and written materials which contain hostility toward Islam in 2011 and sentenced to 6 years in jail. A year later, in 2012, Sebastian Joe was also found of guilty and sentenced 4 years in prison for posting some articles on Facebook that included intimidations towards Islam and God. Within the same year, Alexander Aan was also sentenced 2.5 years in prison of Article 28 infringement for spreading hate on religions and race on Facebook. All of them were accused of spreading hate based on religion and intergroup identity using Facebook pages and postings (Wiryawan et al., 2011).

Similarly, Article 29 of ITE, which addresses threats of violence or intimidation issue, was applied in Anthon Wahju Pramono case in 2013. He was an advocate alleged to have sent an SMS (short message service) containing personally threats of violence or intimidation to an owner of a textile factory in Solo, West Java. Anthon Wahju Pramono was found guilty of making a death threat by sending some SMS intentionally to the boss of *PT Sri Rejeki* and sentenced 3 years in prison in 2013 under Article 29 of ITE. Intimidation or threats of violence issue carried out by the Article 29 of ITE was not formulated clearly, therefore it might be misinterpreted by the Indonesian law enforcement officials. Article 29 of ITE says “any person who knowingly and without authority sends electronic information and/or electronic documents that contain violence threats or scares aimed personally” (“Law of Electronic Information and Transactions,”).

The lack of clarity of Articles 27, 28 and 29 of ITE have led to the misinterpretation of those Articles from the law enforcement officials like the police, the public prosecutors and the court. Without greater guidance from ITE, officials are left to interpret the infringement of these Articles on their own and may impose different kinds of procedure and penalties subject to their individual understandings. For example, according to an ICJR (Institute for Criminal Justice and Reform) report, the

average penalty of ITE violation stipulated by the public prosecutor is only 5.1 months sentence. However, to date the average sentence of ITE breach sits about three to four months sentence on average (Eddyono et al., January 2016).

Repetition or misinterpretation of Articles 310 and 311 of defamation in Criminal Code

The last of the flaws lies in how Article 27 duplicates extant laws. The ICJR report shows that Article 27(3) of defamation might be duplicating the existing Articles 310 and 311 of the Indonesian Criminal Code that already regulate defamation and were passed before ITE was enacted (Global Business Guide Indonesia, March 10, 2015). As mentioned earlier, Article 27 can also be linked to the Law of Pornography. Moreover, Article 28 of ITE extends offline norms into online environments such as that outlined in Article 156 of the Indonesian Criminal Code and Law No. 40/2008 of Ethnic and Racial Discrimination (Eddyono et al., January 2016, pp. 8-10). The duplication of these laws can be confusing and lead to an excess of criminalisation. Generally speaking today the view that the online and offline parts of individuals' lives are separate is no longer held to be true. However, considering the difficulties in improving media literacy, especially in rural areas throughout Indonesia despite growing access to the Internet, this continues to be an area of great concern.

The flaws within some Articles of ITE indicate that the implementation of ITE as a cyber law in Indonesia might inhibit people from voicing their critical views, comments and complaints using an electronic medium of communication such as email, blog, or Facebook because they could face imprisonment. As Agus from *Satudunia* says, "ITE has expanded into an instrument of retribution which can be used to restrain public criticism, to interrupt a discourse that is against a moral aspect", and to trip up people through their opinions electronically with a confinement threat (interview on August 19, 2015).

CSOs' contribution and involvement in response to ITE's initial implementation and revision

Aside from drawing attention to the potential restriction of freedom of expression over the Internet, there have been other actions undertaken to counter the issue. For example, programs to inform public on media and technology literacy that has been

conducted by *Satudunia* and *Medialink* at local communities in Central and East Java. Greater co-operation and co-ordination across multiple CSOs have also been initiated by *ICTwatch* and *Satudunia* in order to achieve more influential contributions in policy making process. Participating more in advocacy revision of ITE and legal challenges has been maintained by ICJR and ELSAM/LBH Pers for the sake of public interest.

In the 8 years since the enactment of ITE, the law has provoked several responses from the general public and CSOs. These responses include legal action and advocacy by individuals and CSOs who are concerned with democracy discourse and restrictions on freedom of expression on the Internet. I have already mentioned the unsuccessful attempt by Narliswandi Piliang in 2008 to review ITE in court (Jakarta Post, 14 November 2008). Around the same period, legal action was taken by CSOs advocating a review of Articles 27, 28 and 29 into the Constitutional Court but that also failed (Jakarta Post, 15 September 2008). Another attempt was made by Anggara and Wahyudi Djafar from ICJR to engage in a judicial review of ITE in the Constitutional Court in 2010, that met a similar fate (Malau & Rahardjo, 19 January 2010). In all decisions of criminal defamation provisions of ITE, the Constitutional Court reiterated its reasoning that the provisions constituted a justifiable restriction on freedom of expression, which is intended to serve the equally important goal of safeguarding citizens' right to protect their honour and dignity. What these attempts indicate is that the dominance of the government as an actor in the regulation of new media in Indonesia.

The enactment of ITE also provoked different types of responses from CSOs that focussed on the development of ICT and the Internet in Indonesia. Some, like *ICTwatch* which has been conducting programs on Internet Safety, Internet Rights and Internet Governance since 2002 simply continued to develop campaigns to educate Internet users on their rights with the Internet Sehat program. The guidance provided in the program was designed to stimulate young people to be more productive and creative in generating innovations in working and daily life supported by technologies (interview with Ronny, from *ICTwatch* on January 27, 2014).

ICTwatch's concern with Internet safety precedes ITE, as it began in 2002 to use the phrase, Internet Sehat (a safe Internet), when addressing the general public about Internet use. According to Ronny, from *ICTwatch* whom I interviewed, the

organisation first launched the Internet Sehat campaign via a web site on 29 April, 2002 and marked its offline advocacy of Internet Sehat to the Indonesia Ulama Council (MUI) on March 13, 2002. Safety, or in this case, the avoidance and control of deviant behaviour and content while online is the focus of *ICTwatch*'s work on digital literacy.

Ronny reveals that the term *Internet Sehat* is designed to emphasize the wisdom of balancing the nation's morals against that of the freedom of expression on the Internet through three social practices. They are: self-censorship at the level of family and school; increasing the production of positive, useful and interesting local content; and empowering civil society through ICT (interview on January 27, 2014). Part of their agenda is to draw attention to cases of Indonesian celebrities' indecent behaviour in videos.

Ronny continues,

We began a campaign of self-censorship in families and schools to promote *Internet Sehat*. This campaign was a response to the unclear censorship policies towards the Internet from the Indonesian government. We asked for *MUI*'s support as the Islamic institution who can list what is proper and not according to Islam rules, to legitimise the *Internet Sehat* campaigns (interview on January 27, 2014).

In addition, *ICTwatch*'s ongoing advocacy for Internet Governance supports multi-stakeholder dialogues in ICT policy to uphold the key principles of transparency, accountability, equality, collaboration and professionalism. According to Ronny, from *ICTwatch*, the importance of multi-stakeholders has been an emphasis since the declaration of Indonesia Internet Governance Forum (ID-IGF) in November 2012 and the organisation of the 8th Internet Governance Forum in 2013. ID-IGF was formed based on the commitment between the business sector and ID-CONFIG, the Indonesian Civil Society Organisations Network for Internet Governance, in Indonesia. This declaration was signed as an acknowledgment among multi-stakeholders that the Internet governance not only needs technical skills but also interactions continuously with other issues such as laws, economy, education and development (interview on January 27, 2014).

I have already mentioned the efforts of *ICTwatch* to educate communities on media and technology literacy with the production and sharing of a series of documentaries titled *Asadessa* and *Linimasa*. According to Ronny, these documentaries were also to empower these communities to enrich local content on the net and have been in use since 2011 (interview with Ronny, from *ICTwatch*). These videos feature the efforts made by ordinary Indonesians to use the Internet, social media and ICT to establish and empower themselves and their communities over the course of five years starting with 2011 and ending with 2015. For example, the 2012 documentary tells the story of the role media literacy played in how citizens responded to counter rumours spread online and via mainstream media during events like the Ambon riots in 2012 (<http://asadessa.ICTwatch.id/linimassa-02/>). In one section (starting around the 11 min mark), the narrator uses the phrase “how ordinary people can do extraordinary things” to describe the range of ways Indonesians use the Internet to create their own spaces to advocate (for HIV/Aids), share information (through blogging, tweeting and community radio) and even, express opposition. In another section of the documentary, the narrator relates the story of how Indonesians, from mummy bloggers and disabled rights bloggers to those who market their works of batik art to the world, have employed the strengths of the Internet to venture into e-commerce.

Similar activities have also been conducted by *Satudunia*, another CSO with a focus on the strengthening of the knowledgeable civil society in Indonesia. Since 2006, *Satudunia* has organised regular discussions, talks and workshops under the principle of ‘Connect, Share and Find’. According to Agus, from *Satudunia*, they facilitate writing classes and journalistic trainings for activists and teachers as a process of knowledge transfer. These activities are intended to share information about ITE and to train activists and journalists in writing news about ITE in mass media. He said:

We aim to spread an awareness of ICT usage and Internet policies among Indonesian society. We also provide fellowship programs for activists that continuously campaign the agenda of revision of three national laws in 2015: the revision of Broadcasting Law, draft of Public Broadcasting Act, and the revision of ITE. [He also added] *Satudunia* started a new concept of Focus Group Discussion (FGD) this year. We initiated to conduct regular FGD among CSOs to establish a strong coalition and new

perspective in looking towards our organisations. The FGD used to be a one-to-many discussion with an expert and CSOs' members as participants (interview in August 2015).

The activities conducted by *Medialink*, *Satudunia* and *ICTwatch* seek to create social change through changing practices or actions repeated on a regular basis within the structure. As Giddens argues that in structuration concept, action and structure are necessarily related to each other: structure in societies formed as people act in regular ways, and action is only possible because each individual possess socially structured knowledge (Giddens, 1984, p. 377). By empowering communities using CSOs' programs and activities, a structure of policy process is formed consisting of practices and interactions between CSOs and communities which provide actions to form another structure of policy process with government or business practices. As with the instance of Prita's alleged infringement against Article 27 of ITE, these programs and campaigns by CSOs demonstrate the duality of structure, making resources like Article 27 both the medium and the outcome of the conduct it recursively (in this instance, attempts to) organize.

Other CSOs have also responded to the process of ITE review by the establishment of CSOs coalitions: KITA (Internet without fear coalition) in 2012 and SIKA (Friends for Fair Information and Communication) in 2015. They aim to confirm the process of ITE revision in the national legislation program operates publicly (SAFEnet, June 2015). This establishment was an additional effort in assistance of the earlier efforts made by *ICTwatch* since 2012 on Internet governance campaign (interview with Ronny, from *ICTwatch*), the declaration on ID-IGF (Indonesia Internet Governance Forum) in 2012 (Banyumurti, November 2, 2012) and the 8th Internet Governance Forum in 2013, which was explained earlier (Parlina, March 2, 2013).

There are also some activities conducted by FDD (Digital Democracy Forum) which involved public participation in the process of ITE review such as a meeting on Indonesian democracy digital in 2014 (Forum Demokrasi Digital, December 16, 2014), a dialog of safeguarding democracy and ITE revision in 2015, and discussions on netizen's roles in guiding democracy in Indonesia and ITE emergency status' among CSOs in 2015 (Forum Demokrasi Digital, November 11, 2015).

Media Literacy and Regulation

Looking at the growing number of cases related to the flaws in ITE occurred since its enactment, a question of media and Internet literacy comes forward. In the context of the potential threat that improper or unknowledgeable use of the internet could present for users courtesy of ITE, the development of better and broader media literacy among Indonesians is increasingly important.

According to APJII survey in 2016, the number of Internet users in Indonesia was 143.26 million people while the population of Indonesia was 252.4 million people. The number was concentrated in western-urban areas of the country such as Java, Sumatera and Bali (Asosiasi Penyedia Jasa Internet Indonesia, 2017). In fact, from 2010 to 2015 the number of urban internet users has been at least three to four times as many as those who live in rural areas. In the last three months of 2010, for example there were 17.74 % of users of the internet based in urban areas where just 4.16 were from the rural areas. And in 2015, this ratio became 32.04: 11.70 (Statistics Indonesia, 2016). By and large this means that people in rural regions and smaller cities have very limited access to internet technologies and lesser opportunity to pick up IT skills, let alone learn about media literacy. Those who do so tend to have learnt these skills through CSOs' programs.

An example of the kinds of programs initiated by CSOs is the concept of smart village adopted by villages in West and Central Java since 2011 through the *Desa Membangun* program, initiated by local government and *Gedhe* foundation. *Desa Membangun* is a movement of connecting villages by initiating a self-reliance village approach in utilising ICT in the management of village resources and governance. (Desa Membangun, 2011). Community empowerment through the use of ICT and social media also took place in *Medialink's* communities in *Kebumen* and *Wonosobo* in Central Java; and *Sidoarjo* and *Lumajang* in East Java; who have used ICT and social media for information seeking about JKN (National Health Insurance) funding and data assistance (*Medialink*, January 2014).

Conclusion

ITE as the case study of this thesis is analysed to show how the Indonesian government and its people have responded towards the development of information and

communication technology, particularly, the Internet. Looking at the long process of ITE formation, from 2003 to 2008, the Indonesian government seems to be puzzled how to form an appropriate law to regulate the Internet. And since 2008, the implementation of ITE has produced many problems related to the ‘prohibitions acts’ clauses, particularly the online defamation clause. The cyber law that was designed and expected to accommodate safe and trustworthy electronic business transactions has become a restraint on the freedom of expression and rights in digital environments.

By investigating ITE shortcomings and major cases of ITE violation since 2008, the process of ITE implementation review seems to be more challenging for the government of Indonesia to re-formulate a specific regulation for Internet practices. Responses from CSOs and Indonesian people towards ITE implementation have generated a crucial agenda for ITE to be revised and placed in *Prolegnas* in 2015. The discussion of ITE revision has been urged to be conducted within participation from various parties involved and approaches.

When the Indonesian government finally decided to revise ITE and placed the revision agenda in the *Prolegnas* in 2015, it might seem that the objective of protecting freedom of expression and digital democracy had been fulfilled. However, there continues to be some debate surrounding the revision of ITE. Firstly, a discourse of pros and cons of whether ITE should be revised or not. Secondly, there is no consensus as to whether omitting Article 27 altogether or reduce its penalty would be more effective. And lastly, since the most cases of ITE violation have to do with defamation online, further discussion as to whether defamation in Indonesia belongs to the category of criminal act or civil act is significant.

Chapter 7. Working towards improvements in ICT Policy formation

Introduction

Following chapter 6 which illustrates main flaws in ITE as the result of the gaps between the ideal and actual process of ICT policy development in Indonesia since 2008, the purpose of this chapter is to analyse some aspects in the ITE formation process which can be improved to formulate a policy that regulates the usage and applications of the Internet specifically, integrates other regulations, and meets expectations from different publics in Indonesian society. These aspects are public participation in policy process from the beginning until the end of process (enactment of law or regulations), the politics of policy making process in Indonesian government system, and challenges of Indonesian internet infrastructure and access, and the level of digital media literacy among Indonesians.

As explained earlier in chapter 1, internet infrastructure and access are the main challenges in Indonesian internet development. These two issues are primarily consequences of Indonesian geographical condition, which make the building of internet infrastructure across the nation very costly. Although there have been some infrastructure development programs implemented since 2009 such as the Palapa Ring Project to connect all regions to the Internet, problems with equity and affordability in relation to internet access still remain. It requires a strong commitment from the government to support internet infrastructure development and cooperation between business entities and the government to provide equal and affordable access for Indonesians. Not to mention public participation, represented by the CSOs, in the policy making and implementation processes. Within the context of ITE making and implementation process analysed in this study, it was only in initial stage that CSOs were not involved in the drafting process with the national government and the big business. However, during the ITE revision process, as explained in Chapter 5, the CSOs have been actively involved in certain levels such as in public hearing, monitoring and reviews levels.

An important issue emerged along with the development of ICT in Indonesia since the year of 2000, the issue of how Indonesians use ICT. This question is linked closely with the technological and communicative capabilities and skills developed within education at schools and homes or put differently, digital media literacy. As explained previously, digital media literacy in this thesis is referred to the ability to evaluate online content, which in Indonesian context is defined as acceptable online behaviour linked closely to social and cultural norms of Indonesia's identity as a multicultural nation with a majority Muslim population. This condition had created problems in online practice within society where the ambiguous wording of various Articles in ITE have led to differing definitions of information that conflicted with each other.

In Chapter 5 I also discussed how the CSOs, *ICTwatch*, *Satudunia* and *Medialink* have worked to improve digital media literacy through their programs such as Internet safety campaign, informative documentaries, writing classes and journalism training held by *Satudunia*. *Medialink* as one of CSOs observed in this thesis, also has conducted some programs such as a learning group *Ar-Rahmah* and an information distribution among *Medialink*'s community through its newsletter, *Asik*. Other activities conducted by CSOs such as FDD, KITA, SIKA and SafeNet that urge Indonesians to participate in ITE implementation and review process are examples of CSOs' efforts to improve technological and communicative capabilities and skills among Indonesians.

The next crucial aspect to improve ITE formation process concerns the politics of policy-making processes within the Indonesian government system. What is understood here as the politics of the policy-making process is the system operation and behaviours of people and institutes with power. In Indonesia, as explained in chapter 4, the policy-making process involves many levels and ministries of the government as well as members of the House of Representative (DPR), who are members of many different and contesting political parties. To actively advocate for the interests of the public during the policy-making process, CSOs as the representative voice of Indonesian public must understand how the process and politics of the DPR work. There are layers of governance and lines of authoritative bodies within the policy-making process in the Indonesian government system that need to be recognised of and to work with.

To achieve their objective of contributing to social change, CSOs need to understand the politics in order to have political benefits within the system of government to support CSO's campaign. Although the authoritarian regime has collapsed after *Reformasi*, civil society actors who enter the political arena still have to form political parties and other formal political institutions (Haynes, 1997). It is also not unknown in Indonesia for political parties to recruit political leaders in new democracies from civil society groups (Andreas Uhlin, 2000, pp. 10-12). CSOs and their leaders are painfully aware of the need for political nous at all the multiple levels of government if they are to tackle issues from access and literacy to Internet governance.

Agus of *Satudunia* relates the example of the fairly frequent "emergence of a new draft [of regulations] at the last moment" to illustrate the need for CSOs to understand the politics of the policy-making process. On such occasions, because CSOs understand and can at times anticipate such moves, they are able to present alternate formulations and provoke further discussion, thus, playing the important role of questioning these last minute drafts from the government. The government appreciates the role CSOs play in this process and have, according to Agus, on the "environmental issue, the Mineral Resources Act" adopted the alternate proposed by CSOs. However, in the end the issue was taken to and settled at the Constitutional Court. Most times, however, alternate drafts from CSOs rarely make it to the decision-making stage at the last minute. As Agus explains, sometimes these last-minute drafts appear "like a dawn attack at election time". CSOs do not have any power in this instance and have only their "vision and mission" to bring into the policy making process to bring to the new draft (Agus, interview on August 19, 2015).

The last aspect is the building of participation and expectations from the public, CSOs and business in relation to internet usage and its governance in Indonesia. In advocating for rights, empowerment and safety, the CSOs such as *Medialink*, *ICTwatch* and *Satudunia* and others have introduced these notions as resources into the structure of ICT policy. One result is the expectation from all actors of a transparent and accountable process of internet policy making, its implementation and review.

Agus from *Satudunia* explains that CSOs have a variety of approaches when working with the government. According to him, *ICTwatch* has a more cooperative method of working with the government due to its close relationship with the current Minister of

Communication and Information. *ICTwatch*'s insider advantage benefits their involvement in the ministerial programs and can in turn bring more benefits to other CSOs and Indonesian people. CSO can, therefore, work within the government system even as it works with society, thereby improving their bargaining position within the policy-making process (interview on August 19, 2015).

Infrastructure and Access

A reliable telecommunication infrastructure is critical to information access. This concern has been central to *Satudunia*'s efforts to strengthen a knowledgeable civil society by ensuring information equity between the government's programs and society. According to Agus from *Satudunia*, Civil Society Organisation (CSO) has a role in building an organisational capacity in using information, communication, knowledge and technology with a new and continuous perspective and strategy (interview on January 27, 2014). Due to the limited telecommunication infrastructure in certain regions in Indonesia, especially outside the island of Java and the eastern parts of Indonesia, *Satudunia* has concentrated its efforts on facilitating the flow of information and the continuity of access across Indonesian society through two priority programs.

The first is the sharing of resources program directed at facilitating knowledge and information sharing among CSOs to strengthen online and offline civil society movement. As Agus puts it, 'the ability to make changes is started from the organisational ability to manage and use information, communication, knowledge and technology strategically, effectively and efficiently' (interview on January 27, 2014). This sharing of resources program is named 'Facility Exchange' and uses both online and offline methods such as *satuportal.net*, mail-list of *Satudunia*'s partners, mail-list of 'ICT for social justice', social media platforms like @oneworldID and Facebook: *Satudunia.foundation*, and online newsletter to carry out its objectives. *Satudunia*'s offline methods include bulletins, CD, workshops and focus group discussions. This service of resources and website sharing occurs due to the concept of *Satudunia*'s partnership with regional communities across Indonesia. Agus adds, in the past, *Satudunia* provided a website sharing service for partnership. However, the partnership has extended into involvement with projects, information updates and

collaboration opportunities for local CSOs as they have limited access and information to the donors (interview on August 19, 2015).

Satudunia's second program is concerned with capacity building in information, communication, knowledge and ICT among civil society organisation. The program is conducted in a format of in-house training and includes several tasks such as how to manage information and knowledge, to document and capture information, printed media journalism, online and citizen journalism. *Satudunia* has also conducted writing workshops on how to write a change story for CSOs regularly. Writing a change story is one alternative way for program's monitoring and evaluation.

Communication strategies and utilization of ICT applications such as 'SMS gateway' application for farmers in West Java in cooperation with USAID, training in DNA (Discourse Network Analysis) for conducting media analysis and 'open source' application of Open Street Map from the Humanitarian Open Street Map Team are also parts of *Satudunia* services. Agus explains, capacity building services offered by *Satudunia* are based on the assumption that CSOs in Indonesia already have a lot of information and general knowledge about ICT, but not the ability to manage the information and knowledge well. This leads to a quality of media and technology literacy, the ability to use, select, and process information, even to produce and distribute or the information to solve problems they have. In a further step, CSOs might use their ability to manage information to contribute more in a policy making process. He also adds that new perspectives and strategies towards ICT are essential for complex changes and problems in Indonesia (interview on January 27, 2014).

Agus also adds that these collective intelligence programs based on the organisational ability and information equity are *Satudunia's* major activities to strengthen civil society in Indonesia. One example of *Satudunia* practice to support ICT implementation at the local level is the assistance given to a village in Jatiwaras, Tasikmalaya West Java. *Satudunia* helped the village to maintain its own website, 'mandalamekar.desa.id'. Part of the movement of village development (*Gerakan Desa Membangun*) since 2011, the website is an example of how ICT is being used for village management and governance through the application of open source software.

Similar to *Satudunia*'s programs of improving access of internet and information for communities across Indonesia, efforts to improve information access can be evidenced by *Medialink*'s programs at the local level. According to my interviewee from *Medialink*, Bambang, the question of how people or society use information and benefit from it has been their focus since 2010. These questions led him and his friends in *Medialink* to establish two priorities in their programs: the assistance program for marginal groups to be capable in using information and the advocacy of national policies related to information access. Both of these priorities are a result of *Medialink*'s vision of strengthening democracy through a more equal distribution of information and access to sources of information for social welfare benefits (interview with Bambang, from *Medialink*, on January 24, 2014).

Bambang says that the assistance program targeted for marginal groups was designed to spread the awareness of the importance of information in the solution of their problems, particularly basic health problems. *Medialink* has helped the marginal groups through its information utilisation programs. The marginal groups they help are usually small, local communities, many of whom are victims of natural disasters. Whether initiated by *Medialink* and/or the villagers, the programs serve to (re)establish social security. They include: *Jimpitan Sehat* (a program aimed at empowering female and less-educated group in Besuki Timur village, East Java); *Kelompok Porong* and *Kelompok Belajar Arrahmah* (two groups established to aid victims of the *Lapindo* mud disaster in Sidoarjo, East Java). They are examples of self-reliant communities who have learnt to manage information and implement ICT and the Internet in strategic ways (interview with Bambang, from *Medialink*, on January 24, 2014).

Policy making process: layers of governance and lines of authoritative bodies

As mentioned earlier, the policy making process in Indonesian government system involves many parts of the government as well as members of the House of Representative (DPR), who are comprised by members of many competing political parties. To be effective representatives of the Indonesian public and actively advocate for the interests of the public during the policy-making process, CSOs must understand how the process and politics of the DPR work.

One major practical activity to do with social changes within a community is participation in policy making. *Medialink* had contributed to this activity by facilitating dialogues within the communities on issues of *National Health Insurance*, trained communities' skills in media literacy and negotiation (interview with Bambang on January 24, 2014).

CSOs participation in policy development is also aligned with the requirements of public consultation in the legislation process as mandated by the Law of Decentralisation since 1999. According to this Law, both government and the parliament must conduct public hearing during the policy-making process. Inputs and initiatives on the draft of legislation might come from the government or parliament and civil society. Civil society can offer reviews and/or alternate drafts of laws.

Access and participation in policy-making processes can be achieved by enabling public discussions about ICT formation and review. This means that CSOs should have more active roles to work within and outside the system of policy making, not only actively play roles in the review process but also in the formation process, since the beginning the policy was discussed. This analysis might be the answer to my initial assumptions of the thesis. Working outside the system, the CSOs should have the capabilities to organise meetings and talks among CSOs and the general public including students, academics, activists, journalists, media practitioners and common people with lesser background knowledge of internet policy development. To be productive these meetings and talks should be conducted based in an open and free environment principles. For example, one of the last activities conducted by CSOs in 2016 was when the three CSOs (*Medialink*, *ICTwatch* and *Satudunia*) participated in public hearings on the national agenda of ITE revision alongside legislative members and the Ministry of Communications and Information (ICJR, 2016a).

Public participation and expectations in policy process

The concept of independence has always been around the discourse of democracy. And this discourse of democracy - a discourse of protecting civil rights in a democratic society - was challenged by restrictions imposed on the freedom to use the Internet and to voice opinions or even critics using social media, mostly after the enactment of ITE in 2008. Internet which appeared as the more advanced technology brings about the

discourse of democracy into a new platform, a digital one, posits some issues such as its infrastructure, access, content and security regulations. These issues if they are not managed carefully, as already occurred, will form more complex problems, abuse and exploitation of Internet regulations. The ambiguity of the wording in ITE and a lack of understanding from the authority, the police and prosecutor to interpret the law, have been the major constraint for democracy in digital era. This law might reflect anti-democratic principles as many cases of ITE breach occurred in interactions between powerful versus powerless people.

Reformasi had an impact to expectations and aspirations amongst the people for a stronger democracy in Indonesia. A stronger democracy requires a more transparent and accountable system of government and public participation in any kinds of political activities such as being an active member of political party, to be involved in the national elections, to participate actively in policy making process or express opinions, critics and suggestions about the governments. Working with regional and local communities across the country to observe and examine governments' policies and programs is also of examples of public participation.

In the context of internet policy development in Indonesia, CSOs like *ICTwatch*, *Satudunia* and *Medialink*, have made several efforts to play a role of forming opinions about ITE implementation and review since 2009, in specific, *ICTwatch* which has a great concern with Internet usage and governance in Indonesia since 2002. Examples of their efforts are some campaigns towards the revision of ITE since 2010 such as *Sepiring Nasi, Lauk Sate, Giring Revisi, UU ITE...* (A plate of rice, satay, conduct revision, ITE – a poetic form usually contain humorous messages to remind people to push government to revise ITE) and *#JANGAN LUPA, Presidennya, Anggota DPRnya, Menkominfonya, Segeralah Revisi...ITE* (#DON'T FORGET, President, Legislative Members, and Minister of Communications and Information, Revise ITE Soon....) (Internetsehat, 2014). These campaigns used a humorous message to attract more attentions from people with different background to participate in ITE revision campaigns.

Information about and discussions of ITE revision process were also disseminated by CSOs using many means of communication including file-sharing and open access document retrieval through CSOs websites and slide share applications. CSOs also

authored articles for publication in national newspapers as additional campaign of ITE revision process (Erdianto, 2016). Reviews and analysis breaking down the implications of implementing ITE and its challenges and problems were also carried out by CSOs. For example, *Satudunia* published two analysis on monitoring ICT policy in Indonesia, *Menelisik Pertarungan Wacana Revisi UU ITE*, and *Melawan Dominasi Wacana Regim Blokir di Internet* in 2015. Workshops and journalistic classes conducted by *Satudunia* through its program: *Rumah Pengetahuan*, have shared and spread awareness about the importance of ICT skills and usage. *ICTwatch* has also organised several publications on ITE reviews and Internet literacy, *Netizen facts*, which are created periodically (Internetsehat, 2015a). These documents are published and shared freely for the general people through a file sharing application. Moreover, *ICTwatch* also has a program on Internet skills enhancement through a learning module *Buku Internet Sehat* which is publicly shared (Internetsehat, 2015b). As Nugroho (2008, p. 97) remarks, Internet usage by CSOs has also contributed to the reshaping of civil society activism in Indonesia. He argues that using the Internet strategically in CSOs' movement might enable CSOs to influence public participation in social reform and development in the country.

According to Ronny from *ICTwatch*, the involvement of multi-stakeholders in Indonesia started in the field of Internet domain and intellectual property between the Ministry of Communication and Information (MCI and the business sector via the APJII (the Indonesian Association of Internet Service Provider) and PANDI (the Indonesian Association of Domain Name). After the eighth Internet Governance Forum (IGF) in 2013, MCI has taken an important step towards working with multi-stakeholders. MCI invited ID-CONFIG as the civil society representative in a discussion of the regulation of online content. This meeting signalled an increased commitment from the government to acknowledge the contributions of civil society and the business sector as an equal partner in Internet governance (interview on January 27, 2014).

Public participation and expectations in ICT policy development in Indonesia can also be observed from a major breakthrough event held in 2013: The 8th Internet Governance Forum (IGF). This event was important as it showcased collaboration between three actors in the Indonesian ICT policy development: the government, big

business, and CSO. IGF 2013 was an example of cooperation between multi-stakeholders in Indonesia in organising an international ICT event. It also presented Indonesia as a country that has an evolving commitment towards ICT policy development.

Yet even before IGF 2013 was held, ‘Internet Governance’ had been *ICTwatch*’s advocacy program since 2010. Its aim is to support Indonesian multi-stakeholder dialogues in ICT by upholding the key principles of transparency, accountability, equality, collaboration and professionalism. As Ronny points out, the declaration of commitment between the business sector and the civil society on Internet Governance in Indonesia (ID-IGF) during the IGF in November 2012 emphasized the importance of multi-stakeholders. This declaration was signed as an acknowledgment among multi-stakeholders that the Internet governance needs not only technical skills but also continuous interactions and collaboration on other issues such as laws, economy, education and development (interview on January 27, 2014).

Conclusion

There are at least three important aspects in working towards improvements in ICT policy formation process in Indonesia. The fundamental element to improve is government’s commitment to involve general public / multi stakeholders within policy making process. Other crucial aspect is the nature of policy making process itself which includes layers of governance and lines of authoritative bodies in Indonesian system of government. Expectations from the public, CSOs and business can only be transpired if public participation occurs within the policy making process. Apart from those aspects, the major challenges of Internet infrastructure and access and the level of digital media literacy among Indonesians still need to be confronted.

Conclusion

Process of ICT policy development: from contestation to collaboration, and back to contestation

This study began with a question about ITE enactment in 2008 and ITE post-implementation in Indonesia. It has also further questioned the conditions after implementation of the ITE, during which there have been many cases of ITE violations or infringements related to rights to expression over the Internet. This research investigated how the ICT policy process has developed since ITE enactment and what contributions have been made by the actors within the process, in particular the CSOs.

Using a case study of the ITE and working with three CSOs: *ICTwatch*, *Satudunia* and *Medialink*, this study determined that the process of ICT policy development in Indonesia constituted complex interactions between actors involved in the process, from contestation to collaboration and back to contestation over time. To demonstrate this analysis, this thesis has applied Giddens' structuration theory to describe the mechanism of functioning actors and structures in the ICT policy development, mainly the ITE revision process. These complex interactions were highly influenced by social and political contexts such as changes in governments and the growth of ICT-driven communities and Internet-campaign CSOs, which provided a distinctive platform for creating flexibility within the policy process, previously a dominantly bureaucratic process.

Giddens' structuration theory serves in this thesis as a valuable framework in understanding the interplay between the government, big business and CSOs within the ITE development process. Such understanding is achieved by addressing the gap created by the Indonesian's technological, social and cultural developments especially within the era of post-*Reformasi*, and a relatively lesser attention paid towards telecommunication policy changes.

Notwithstanding limitations and constraints, it is an undeniable fact that ITE revision has been achieved, most importantly with regard to its flaws related to rights to expression over the Internet, and this was only made possible by the role of CSOs in campaigning for ITE revision, not only to communities and public but also by working strategically with government and big business in ways both inside and outside the policy making process. There remains substantial room for reworking of the ITE, the ITE revision process has served as an example of the interactions between government and society where the interests of the general public are contested and often confounded by political and economic interests.

This is in line with Aspinall's argument:

Indonesia remains equally a place of contestation—in the contentious politics of street protests and social movements that have become central to political life, and in the perpetual frictions that occur between oligarchic, popular, and other interests within arenas like parliaments, parties, and electoral politics. That these struggles are complex, and take place in contradictory and fragmented ways, involving ever-shifting political coalitions and conflicts, reflects the complexity of Indonesian democracy and the kaleidoscopic patterns of social interest that underpin it (Aspinall, 2013).

The collaboration aspect within ICT policy development process can be described by looking at the ways CSOs have worked with the government. CSOs have played strategic roles by implementing two ways of working: outside the system (with other CSOs and communities) and inside the system (with the government and big business). *ICTwatch*, *Satudunia* and *Medialink* programs that support the community in media and technology literacy, help the community to gain access to information and ICT, and help them participate in the policy-making process are some of the examples. *Satudunia's* program of *Rumah Pengetahuan* (Knowledge House) is to support activists and journalists with writing courses and organisational capacity development and *Medialink's* program of information usage for local communities in marginal areas in Central Java, East Java and Ambon. *Medialink* helped these communities make use of ICT and information, mainly concerning the national health insurance program, in order to obtain their rights as victims of a natural disaster. Empowering communities

is viewed as an effort to increase CSOs' bargaining position with government and private interests in the decision-making process.

Working inside the system means being a partner to the government's programs in the ICT sector and the ITE revision process, or having a co-operation with big business in conducting those programs. *ICTwatch* programs and activities are examples of CSO roles for working inside the system. As observed in this thesis, *ICTwatch* is perceived as a CSO that has a close relationship with the government, in particular the Ministry of Communications and Information during President Jokowi's administration. This view is also supported by an opinion from Agus from *Satudunia*, who says that a CSO might have a variety of approaches when working with the government. He explains that *ICTwatch* uses a more co-operative method of working with the government due to a close relationship with the Minister. This *inside role* of *ICTwatch* benefits its involvement with the ministerial programs and might in turn bring more benefits to other CSOs and Indonesian people. By playing *inside* (*working within the government system*) and *outside* (*working with society*) roles, CSOs' bargaining position within the policy-making process might be improved (interview on August 19, 2015).

An example of the *inside role* of CSOs is also demonstrated by describing how the 8th Internet Governance Forum (IGF) was organised in Indonesia in 2013. The 8th IGF was considered to be a major breakthrough by all actors involved in ICT policy development in Indonesia. This event was important as it showcased collaboration between three actors in policy development: the government, big business, and CSOs. IGF 2013 was an example of cooperation between multi-stakeholders in Indonesia in organising an international ICT event. It also presented Indonesia as a country that has an evolving commitment towards ICT policy development.

Despite the fact that CSOs have conducted more co-operative methods of working with the government and big business, some division among CSO networks still remains. For example, in the context of ministerial regulation discussions regarding website blocking procedures in 2012 between the MCI and CSOs, an unofficial divide emerged between CSOs. There were those who believed CSOs should hold to the principles of law and human rights, and there were some who attempted to influence the expert council, a body formed by the MCI decision on websites blocking procedures. The principle group that believed CSOs should hold to the principles of

law and human rights argued that CSOs cannot compromise on matters of principle although CSOs could collaborate on other practical matters. This principle group, in the end, chose to operate outside of the government system.

In regard to the ITE revision process, *ICTwatch*, *Satudunia*, and *Medialink* have worked with other CSOs like SAFENet and ICJR to establish SIKA (Friends for Fair Information and Communication), a coalition of CSOs formed in 2015, which has a strong commitment to actively observing the ITE revision process. This commitment was illustrated when SIKA gave a report on a list of problems in ITE revision, *Catatan dan Usulan Masyarakat Sipil atas RUU Perubahan UU ITE*, and sent it to DPR after the first meeting with MCI and DPR in February 2016 (Eddyono et al., January 2016).

One further question to point out, the discourse of ITE revision struggle needs to be shifted from the discourse of online defamation matters into a more comprehensive matters of Internet governance such as the protection of personal data privacy and the policy of internet content blocking which are considered as inappropriate content.

Challenges and limitations of a revised ITE and ICT environment

Although emerging discourse on the digital economy in Indonesia has taken place, challenges surrounding the ICT environment, such as infrastructure and access development, and media and Internet literacy, still remain and need to be unravelled. CSOs have provided essential contributions to the ICT policy development process, for example in the ITE revision process. However, the outcome of the process often does not fulfil the interests of public, and is driven by the dominant political and economic interests. The case study of the ITE revision process in this thesis has illustrated that the contestations of interests among CSOs, big business, and the government were highly influenced by the actors' resources - their degree of access to information, power and dominant position within the debates - and by the structure of policy-making process.

The long process of reaching a decision to revise the ITE, from 2009 to 2015, showed that the process was actually a struggle between the state and society. The revised ITE, was being discussed in formal meetings with DPR, MCI, and some CSOs in a relatively short time of 3 months, from February to April 2016. Including CSOs only in the first meeting to discuss ITE revision drafts was an example of the existing rigid

principles applied by the government. It seems that the government was still unwilling to have direct internal CSO engagement in the policy-making process. Therefore, CSOs depend on political party members in DPR to support what they have fought for in the ITE revision process. Eventually the ITE revision draft was legalised in DPR in October 2016 and enacted a month later.

The ITE revision covered some points which focus on preventing a multiple interpretation of “distributing, transmitting and accessing electronic information that contains defamation” in Article 27 by adding an explanation of what is meant by that expression, and making amendments to penalty and case status in an Article 27 infringement. The 6-year penalty was shortened to 4 years and a ‘*delik umum*’ (general offense) case status was changed to a ‘*delik aduan*’ (a report should be made by a victim) status. In practice, this changing status means that power has been shifted away from the ability to place someone directly in jail due to a law’s violation (Ministry of Communication and Information, 2016). This decision induced some robust reactions from CSOs. Mainly they were disappointed that the critical points in the ITE were not changed according to their CSO’s aims. In particular, Article 27 on defamation, which restrained public rights to express opinions and critique the government was not deleted (Johnson, 2016).

It was a perceptive critic from ICJR and LBH who also claimed that the process of ITE revision was highly influenced by the government’s interests. One such interest was considered to be the government’s unwillingness to allow people to criticise the government. The right to express opinions was restricted by Article 27 of the ITE remained in place although its penalty was reduced (ICJR, 2016b).

Similarly, *Satudunia* also described the ITE revision process as a secretive process where there were not any avenues for CSOs to be involved in and contribute to the process. Although CSOs were included in the early meeting with the MCI and the DPR, their lack of involvement in the rest of the process lessened their input. The early meeting was the one and only chance for CSOs to sit together to discuss the ITE revision. Nevertheless, *Satudunia* and other CSOs like ICJR, ELSAM, LBH Pers, and SIKA, formulated a report on a list of problems in the ITE revision, *Catatan dan Usulan Masyarakat Sipil atas RUU Perubahan UU ITE*, and sent it to the DPR after

the first meeting with the MCI and the DPR in February 2016 (Eddyono et al., January 2016).

Furthermore, one activist from SAFENet also evaluated that ITE revision was only superficial, and did not touch the central question of constraints on the rights to express opinions (Lubis, 2016). He also added that the Internet, as a democratic space, has shifted to a contested space due to more control by the government in the struggle over the ITE revision process. The view of the Internet as a democratic space seemed to fade away as the space became less autonomous due to government regulations and domination by big mass media corporations, or centralised by a single business interest with help from the government. A further confusing aspect of the ITE revision is a new subject introduced within the law, in an Article on "*the right to be forgotten*" principle, which appears to be in need of a more complex explanation.

It is unfortunate that the whole process of ITE revision was less integrated with the spirit of public participation and democracy and that this process has ended in the period of President Jokowi's administration, which had guaranteed after election a period of the democratic values of openness, accountability and public participation.

The usefulness of Giddens' framework to understand the mechanism of functioning actors and structures, and in understanding the interplay between the government, big business and CSOs within the ITE development process, together with the insights explained above, lies in the concept of duality of structure. The concept explains how social practices at micro-level can and do, affect macro-level structures. While structures such as the ICT policy facilitate, and prescribe Indonesians' use of the internet from day-to-day, what Indonesians do on and with the internet, in other words their media and social practices, feed back into the structures. It is where what some might deem deviant social practices take place and also the result of what is shaped by their social practices and their repercussions. The point is, the structure though formed remains malleable.

Meanwhile, Giddens' approach limits discussions of the use of power in social interaction, which is I think a critical point in the Indonesian context when discussing interactions and relationships between actors and structures in policy development process. As Giddens says:

[a]ll social interaction involves the use of power, as a necessary implication of the logical connection between human action and transformative capacity. The stocks of knowledge drawn upon by actors in the production and reproduction of interaction are at the same time the source of accounts they may supply for the purposes, reasons and motives of their action.

As the result of this thesis, a possible future research direction on the influence of power and Giddens' duality of structure in policy development process might be applied in other similar types of analysis.

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Appendix 1 Information Sheet

INFORMATION SHEET

Study Title:

Civic Engagement and the Role of Internet in Indonesian Society

Invitation

We would like you to take part in a research study. Before you decide you need to understand why the research is being done and what it would involve for you. Please take time to read this information carefully. Please ask if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Purpose of Study

The study is designed to investigate the impact of civil society and public participation on the development of Internet Communication Policy in Indonesia. This research will examine the history of Information and Communication Policy in Indonesia, explore how information about ICT policy has been disseminated to the public, investigate online and offline community contributions to the legislative process around ICT policy and examine the impact of these contributions in the context of Telecommunication Law in Indonesia.

Participants Selection

You are being invited to take part in this research because your experience as a government official and a community participant can contribute much to our understanding and knowledge of telecommunication and ICT laws and practises.

Do I have to take part?

It is entirely optional and deciding not to participate or to withdraw from the study at any time will not affect any benefits in any way. You do not have to give a reason.

What will happen if I agree to take part?

If you are happy to participate in the research, we will ask you to read this information sheet and sign the consent form. We will make arrangements for you to meet to do the interviews. It might be possible that the interviews may be done more than one time and followed electronically in written documents such as emails and electronic questionnaires.

What are the possible benefits, disadvantages and risks of taking part?

Your participation will help us find out more about the online and offline public participation in telecommunication policy development in Indonesia. There is a risk that you may share some personal or confidential information by chance, or that you may feel uncomfortable talking about some of the topics. However, we do not wish for this to happen: You do not have to answer any question or take part in the interviews if you feel the questions are too personal or if talking about them makes you uncomfortable.

Will my taking part in the study be kept confidential?

All information you provide to us will be kept confidential. Data from interviews will be confirmed to you before it is published. Only researcher and her supervisor have access to the data. All data collection, storage and processing will comply with the principles of the Data Protection Act under Curtin University Policy.

What will happen to the results of the study?

All information provided by you will be stored on a computer with analysis of the information obtained undertaken by the researcher at Curtin University. The results from this analysis will be available in one or more of the following sources: scientific papers in peer reviewed academic journals; presentations at international and regional conferences; local seminars.

Who has reviewed the study to ensure it is correctly conducted?

Research Ethics Committee at Curtin University has reviewed this study. Research projects are not undertaken unless Ethics Clearance has been granted. If you wish to

find more about Research Ethics Committee, please contact School of Media Culture and Creative Arts, Curtin University.

The visual materials or photographs taken during this research will be used only for additional documents and for illustration in conference presentations. No other use will be made of them without your written permission.

Thank you for your participation and cooperation.

Deviani Setyorini

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Human Research Ethics Committee (Secretary)

Office of Research and Development

Curtin University of Technology, GPO Box U1987, Perth WA 6845

Phone: 9266 2784 or hrec@curtin.edu.au

Appendix 2 Consent Form

CONSENT FORM

Title of Project : Civic Engagement and The Role of Internet in Indonesian Society
Name of Researcher : Deviani Setyorini
Contact Address : Jl Cempaka No 49 Cilegon 42418 Banten Indonesia
Telephone number : +62 81310917097
Email : deviani.setyorini@student.curtin.edu.au / ordinarydevi@gmail.com

Please Initial Box

1. I confirm that I have read and understand the information sheet for the above study. I have had the time and opportunity to consider the information, ask questions and have had these answered satisfactorily.

2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason.

3. I agree to the interview being audio recorded.

4. Having been assured of anonymity, I consent to the collected data being used for analysis, presentation and publication.

5. I agree that the researcher may contact me.

6. I agree to take part in the above study.

Name of Participant :
Date :
Signature :
Contact Address/Tel.no/email:

Name of Researcher :
Date :
Signature :

Appendix 3 Interview Guide

INTERVIEW GUIDE

Name of Interviewer : Deviani Setyorini
Name of Interviewee : GDB
Position : Head of public relations and information of the Ministry of
Communication and Information

List of items	List of questions
The history of Information and Communication Technology Policy in Indonesia	<ol style="list-style-type: none">1. What Telecommunication Law has been implemented in Indonesia since 1994?2. Were there any changes in the Law after <i>Reformasi</i>?3. Are there any specific regulations or law to address ICT? If any, what law and since when?4. Is ICT regulated with mass media law, such as the Law of Press and Law of Broadcasting?5. How did the Law no 11/2008 form? What parties were involved?6. How about the Law no 14/2008?7. Are there any major issues related to the Law no 11 and Law no 14/2008?8. Is there any specific policy, regulations and law about the Internet? If any, please explain.9. Are there any revisions made for the Law no 11 and Law no 14/2008?10. What is the progress of Bill of Convergence and Telematics since it was introduced in 2010?11. Is the Telecommunication Law no 36/1999 being revised?
How information about the ICT policy has been provided to the public	<ol style="list-style-type: none">1. How does the government disseminate any information about ICT policy and regulations? Is it available through the website of Ministry of Communication and Information?

	<ol style="list-style-type: none"> 2. Does the government provide the information about ICT policy in mainstream media such as newspaper and television? 3. Is there any written document about ICT policy that can be accessed by people? If any, what kind of documents and where to get these documents? 4. Is all information about ICT policy accessible for public in general or only for specific information? 5. Who are involved in the discussions of ICT policy? 6. Can common people involve or give any suggestions in the discussions?
Strategic ICT Plan of Ministry of Communication and Information 2010-2020	<ol style="list-style-type: none"> 1. What national plan does the government have towards ICT development? 2. What important or major aspects to be considered the most in the plan? 3. Does the government publish the information about the national ICT plan in mass media? Are there any promotional media or advertisements? 4. Who are involved in the process of making the national ICT plan? Is it only between the government and the Ministry of Communication and Information? 5. Is the national ICT plan open for public's feedback? 6. What is the progress of the plan so far?

Name of Interviewer : Deviani Setyorini
 Name of Interviewee : FC
 Position : Division Manager of Knowledge Management Satudunia
 foundation

List of items	List of questions
Community activities to campaign ICT policy	<ol style="list-style-type: none"> 1. What activities does your organization concern of? 2. Have your campaigns and advocacy done regularly? 3. Do you supply the information about your activities online? 4. Is your website accessible for any people? 5. Is the information about the activities available on the web? 6. Who can be involved in your activities? What are the requirements? 7. Does your organization hold the activities only in certain places? 8. What are the benefits of joining the activities? 9. How do you get the funding for your activities? 10. Who are the key persons in your organization? Do they have any influence in the government?
Involvement or contributions made to the legislative process	<ol style="list-style-type: none"> 1. Do you involve in every discussion with the government about the ICT policy? 2. What roles do you play in the discussions? 3. Do you provide any information regarding the process and the progress of the ICT policy on your website? 4. To what extent is your contribution before, during and after the discussions?

Appendix 4 Interview Transcript

INTERVIEW 1

DS : Sorry, one moment please, I'm going to record this so I don't miss any important information. But in the past 3 years I see that there have been several newsletters. There are several topics according to my personal observations. 3 years is not a short amount of time, provided that you focus, if there is a point you want reach, perhaps derived from an earlier vision. So I see that these activities are connected, and also with the newsletter, hey. I didn't know where the newsletter was distributed, at least the documentation about what is done there and it's something that must be continually improved. In my opinion, because the name implies advocacy or a campaign, I can see it already exists, but when we want to talk about data, the documentation - evaluations and record trails - is not necessarily there. This documentation could be included with the archival data and in the future could be useful as the main data. Nothing more than just for the project if you want it to continue. So I can see that Medialink has a role there.

AF : So Medialink really from the outset (2010) looked at various issues. I was at ESAI before, [working on issues of] freedom of the press and freedom of information. Since 2006, 2007, we have been actively focusing on Act No. 14. When I was no longer in ESAI, with a couple of colleagues I started to develop activities that focused on information, shifting from the media to the person or the information. How did people or society from various sectors exploit or benefit from the information they needed and which was circulating at the time. From these issues it came down to 2 areas of focus. Until 2013 at least. So an interval of 3 years, hey. In 2014, next week, we'll try planning like we did in 2013.

The primary focus is on assisting the community, especially marginal groups, to be capable of benefiting from or using information.

DS : What do you mean by marginal groups, could you give me an example?

AF : Yes. For example, the victims of the Lapindo mudslide in Porong. Since its founding Medialink has collaborated with existing Lapindo mudslide victims Command Posts and various communities of victims. 2 existing communities are still being assisted. The first is a group of women called Jimpitan Sehat in the village of Besuk Timur in East Java. Now they've all moved. Now we're in the process of consolidating the posts that have moved because they've been split into 2 locations. That's what we're assisting with at the moment. Whether we have donations or not, we will continue to assist them. Actually the TIFA foundation has supported them through Tantri's programs since Medialink was founded.

The second group is a study group called 'Arrohmah'. Interestingly, this group was not actually initiated by Medialink. It was initiated by the community itself and the Lapindo victims who were first affected by the mudslide. The first group, Jimpitan Sehat, is located outside the Lapindo dike. The study group, the women, including victims of the Lapindo mudslide, are based at the Bakrie dike who haven't been resettled yet.

They were self-initiated then formed an alliance with the Lapindo mudslide victim Command Post and now we support them within the framework of information utilisation.

DS : What is their focus? What exactly is the study group? Do they provide education to the community?

AF : No, they established the group to establish social security for the disaster victims Command Post. We are assisting from the perspective of information access and utilisation. With that, they can establish social security including things they can claim from the government.

Now the issue is health insurance. They were removed from the new 'Jaminan Keshatan Nasional' (National Health Insurance) scheme database. Because the administration was experiencing difficulties, they were spilt all over the place. Their new location has not been recorded but their previous location was deleted. So that's one example of this project.

Next, the second focus is advocacy. We are involved in advocacy policy where we see we can influence the public's access to information. Medialink has been involved in various policies, for example the legislation on the Digital Broadcasting Act.

DS : This is new legislation, hey?

AF : Yes, then we'll focus on the revised Telecommunications Act. In fact, we would also like to bring back the Media Convergence Act.

DS : Sorry to interrupt, but does the Digital Broadcasting Act have anything to do with the digital television application?

AF : Yes, we can discuss that debate later. Then we supported the Convergence Act and we have participated from the beginning in setting policy on the protection of personal data. The privacy act in Indonesia is called 'Perlindungan Data Pribadi' (Personal Data Protection). Data protection had been more on the European agenda whereas America has something more like a privacy act. So Kominfo (Ministry of Communication and Information) together with the UNPAD think tank is setting the policy on personal data protection. We are also involved.

DS : So is the plan for the Convergence Act to merge with the revised Telecommunications Act? Because if you think about it, since the Electronic Information and Electronic Transactions Act was implemented, there has been a lot of

polemic and the usual stuff from the government, as usual Kominfo (The Ministry of Communications and Information) wasn't interested and this is still going on hehehe.

AF : Absolutely. The Convergence Act was scrapped by the government because it was trivial because various units within Kominfo would be lost or would merge into one. In particular, the sections in charge of broadcasting and telecommunications were combined into one, what's their acronym again? Anyway it's different now. The PPI dan SDPPI (The Directorate General of Postal and Information Services and The Directorate General of Resources, Postal Services and Information). I don't know what the acronym is, resources and broadcasting providers or what, anyway the main thing is that it's about broadcasting infrastructure providers. So broadcasting and telecommunications have merged.

Whereas from a practical business sense, the media in Indonesia in both telecommunications and broadcasting has merged, and has already converged based on business. The world of broadcasting is also a telecommunications-based industry, and also online media which has a business model based on selling data. Data providers and Internet service providers. And telecommunications is the same.

Several telecommunications companies also have online television. So from a practical point of view, it's already happened. But since this will be associated with the existence of several units within Kominfo and the Broadcasting Commission merger with BRTI (Telecommunications Regulatory Board of Indonesia), so there will be a great deal of friction in the business sector. They are more comfortable with the status quo, they have already made large profits from these incompatible regulations. For example there are no regulations on how mobile television is managed. Because from the point of view of content, mobile television must be regulated by the Broadcasting Act, but the Broadcasting Act does not recognise the term 'mobile television'. In fact, even digital television is not covered by the Act.

DS : So the Telecommunications Act was actually originally initiated because of business as well. Because on one hand we're talking about infrastructural issues and the government feels there is no issue with content in the telecommunications industry, and that content should be regulated through specific legislation. And as a result, the Broadcasting Act and the Electronic Information and Electronic Transactions Act appeared.

AF : Actually not really.

DS : I mean put it this way, it's maybe more usual for the government to make an amendment to an article on broadcasting or content, rather than creating new legislation which overlaps with the current Telecommunications Act.

AF : Because according to the government's framework in the Telecommunications Act, radio frequencies are treated differently to broadcasting. In telecommunications, frequencies are considered to be property rights which can be bought and sold by administrators. For example the case of the AXIS and XL merger.

It's only viewed from the perspective of industry monopoly and competition. But nobody considered the frequencies which were used by one group of companies.

Unlike broadcasting, frequencies by rights belong to the public and should be fully utilised for the benefit of the public. So when frequencies are leased, the licenses are periodically up for review. So when the Indosiar and SCTV merger happened, there was uproar, and Kominfo was also in uproar. There are 2 different paradigms within Kominfo. So there are 2 different paradigms, and 2 different issues. Frequency management is regulated by the Telecommunications Act. So from a legal perspective, there is a legal loophole in the SCTV and Indosiar merger. Because the understanding of what 'frequency' means within telecommunications is like that.

So when we hear 'convergence', it is actually about setting these 2 paradigms. There is an opportunity for the frequency paradigm to become public property, and this cannot be taken lightly. The government is more comfortable with revising the Telecommunications Act. It has 160 articles. So if we can't have the convergence [legislation], that's because it's already part of the telecommunications [legislation]. But we will still be seeking a public ownership of frequencies, managed by the state rather than business interests.

DS : I'm actually interested in the first focus. There is a kind of community empowerment. Like a recognition of the need for information. And more focused on marginal groups. Are Medialink's own activities still focused in East Java or are there activities in other areas directed towards marginal groups?

AF : Our base is expanding in some areas in accordance with their basic needs, health. At this time we are shaping information for communities who are able to participate based on information from the health sector, in particular the implementation of National Health Insurance (NHI). We are focusing on the information rather than the medium. Why? Because we don't care about which medium is used. For example, by mastering ICT skills. Every kind of medium possible should be used. With that choice, we are leaving the community free to chose the medium they are most comfortable using.

You could say that Medialink is not asking the community to use a specific medium, but to make use of the mediums there are. Medialink is more focused on how the quality of information access suits their needs. For example, in community groups in 3 regions: Kebumen, Lumajang and Porong. In fact, to participate in the NHI scheme is free as contributions are paid by the state.

DS : So the NHI card is free?

AF : At the moment, all citizens must register for NHI. There are 2 categories, paid and free. Those in the paid category must pay the fees, and in the free category the fees are paid by the state. Those thought to be poor or marginalised must verify any data obtained from information from any source.

We are able to manage information, reproduce information, distribute information and produce information to be released by using the mass media and the Internet. Then we can co-produce. So their information can be adopted by the relevant government agencies. So access to information is developing as a catalyst for marginal groups when they obtain information with the ability to educate to their group or other groups.

We are inviting them become aware of the importance of information, the sensitivity of information. Until now they have considered information to be something common, something just for chatting about, something factual. But information is important you know, we are educating them about ways to locate information from the government, the mass media and other sources. After you have located the information, what can you do with it? We are educating them about disseminating information via their internal distribution networks. After locating the information and knowing what their needs are, how can they benefit from the existing information to resolve any issues? By using information like this, they can even produce information as a way to open discourse, to question the government, to vote, they can make use of the mass media.

This is Taba who's just arrived. This is Devi.

DS : Hi, please feel free to join us, just go ahead.

Sorry, to interrupt, in terms of comparative discourse, it seems to me to be a bit pessimistic and cynical when there are individuals who are good but do not have a position equal to the government. When they become part of the system, they can't fight the system.

AF : That's true, and part of the culture, it's clientelism. That's why we are focusing on the capacity for equity in the community. Courage isn't just 1 or 2 people, for example an informal leader. To be equal is the first prerequisite. The challenges exist on multiple levels.

First of all, a sustainable community. We create a forum or a social medium in a community that makes them come together first. Secondly, there is the capacity for equity. Even so, we're not able to ensure that the capacity of all community members is equal or equivalent. And that is what distinguishes us from the dominant discourse based on information access. In Western Europe it depends on the individual, in China it has a communal basis. In Indonesia the communal originally very much depended on the informal leader. One factor that makes a community unsustainable is its dependence on an informal leader. Maybe Taba can explain about the events in Porong.

Then the second challenge is about the level of ability to make use of the media, media networks, and the mass media. That's where public relations companies or the government fail.

The third challenge is how they are able to press their demands for their version of information to the government, the co-production. We start from the bottom up, which

is the easiest way to reach people. From the village, to the health centre or to the sub-district, then to the Department of Health.

The fourth challenge, the most difficult, which represents Medialink's aspirations, is how they can be connected to each other to develop joint activities. There are some communities that are connected to each other. Our vision is to encompass all of this. This is really difficult and long-term and requires awareness from their part, internalised within themselves and their communities.

DS : If I put myself in their position, to think or realise that every day we need information and that information is important, it's not easy.

AF : That's why we created the social mediums in these community, there are routine meetings which we are forced to hold in which they have to come and talk. There is a medium of reciprocal learning with those we assist.

DS : In the community, are these routine dialogues of a voluntary nature, supported by Medialink, or is it the role of the community to invite local government institutions such as neighbourhood and residents associations?

AF : At first, this group was formed voluntarily. To enable us to bond we started with processing their needs. Medialink did not educate or come to bring a specific program but to offer solutions by finding out the information needs of the community. What are your problems, and the NHI issue emerged.

So, some [communities] were in normal regions, where the geographical boundaries still existed, where the village government is still there, and the local government institutions are involved. In fact, they are forced to demand the village authorities to adopt the products that they produce. But we are training them in negotiation skills.

DS : Is it happening and has it been successful?

AF : In Kebumen there has been lots of success.

DS : That's good, it means that all Medialink does is not in vain.

AF : Exactly, but the challenge in Kebumen is on 2 levels. In a normal society, the challenge is the sustainability of the community.

DS : Because they're getting more and more clever?

AF : Because they don't need us any more. If it's over, then that's it.

Taba : Actually, it's not that they're too clever, but in those communities we always believe that there are people who are smart, and those who are not so smart. If the movement doesn't begin with levelling capacity beforehand, usually the more capable will improve, but the less able will be reluctant to get involved. So we balance or equalise capacity first with targeted interventions at local government agencies.

DS : So if you like, we can't just hope that in one group all participants will be at the same or similar level. The fact is, it has been and will always be that way. What can be done about their sense of belonging?

AF & : We start with their common needs.
Taba

AF : We were successful in Kebumen district where there were several individuals who could negotiate with the village authorities and even up to the Department of Health. Our task is to help close the gap between the community and these individuals.

Taba : Because if it has been experienced elsewhere, it is very likely to happen. For example, a participant in Porong was able to speak at the level of the House of Representatives in Jakarta. Now the question is how to manage the continuity of the process at the community level. On one hand we are considered successful when these participants are able to intervene in government policy, but what if the participants then move or change their position? Being a government spokesperson means they are no longer a spokesperson for the community.

We can't forbid them to become parliamentary candidates, for example.

AF : For example, one of the facilitators that we assisted in Kebumen became a guest speaker for the programs disseminated by the Health Department on the NHI issue. It completely reversed their position. What we observed in that group was the shift in position of the participants. The problem is the gap. In a normal group like that, that is the challenge. They're not facing any problems of natural disasters.

But in the Porong group who were dealing with a natural disaster, the community congress was solid precisely because they were facing the problem together. But there were still many problems when they had to produce information for the public, the media and the government. So it was this vision that we wanted to achieve, in relation to these challenges. So Medialink's strategy leans more towards capacity building rather than the technology or the medium. How to build the capacity of the community to utilise information.

DS : Because the idea is more about community power than individual power. The principle itself is empowerment.

AF : Yes, but you must also consider that there have been many movements for ICT utilisation for communities in Indonesia. For example, Budiman Sudjatmiko's 'Desa Membangun' (Village Development) movement. You must research that. Because that is one way in which ICT must benefit the welfare of the whole community. We also have partners in Yogyakarta, Tantri's program, called Infest, which is developing information channels for migrant workers so that migrant workers are educated about taking advantage of the medium, in information channels.

Tantri : So it's more about developing this community of migrant workers so that they can take advantage of information channels.

DS : Because in the past, advanced technology did not yet exist in Indonesia, so we thought the solution was to purchase and implement these technologies in everyday life. For example, before there were smartphones, Internet connections were slow, and the signals or networks weren't good. But when this technology arrived, we didn't have sufficient expertise to use it.

I read a book about the digital divide a few days ago. Actually, the divide is not only about whether or not we have the devices or the infrastructure, but also about the skills divide and the cultural divide.

AF : Yes that is one of our discoveries. The digital divide exists but also the infrastructure is there, but not necessarily utilised. Tantri and I and a few colleagues from other NGOs are monitoring the Open Government Partnership (OGP) which was initiated by UKP4, in a presidential work group. The open data policy. UKP4 is like a delivery unit in the UK.

We have a pilot project in Indragiri Hulu, Ambon and Central Kalimantan (districts, cities and provinces). They are initiating programs with an ICT basis. Like open data, open budget, open school. One of the programs is to display the data management of BOS (School Operational Assistance) funds on their school website. But the problem in Ambon is that Internet access is not that great and the local community are not accustomed to accessing information through the Internet. So the only people who have access are people from Jakarta and London. How can we make it normal for them to access information via the Internet? This is what has become the focus of our activities and it's a little different from other movements. Because in the context of an information society the technology determinant is strongest, but we are more interested in the social influence of technology.

DS : This is concerned with cultural aspects.

AF : The central point in this debate is a web-based community, which we have not yet adopted as it may not be about the technology required by the community, but the community's capacity to use information. Any medium will be easily exploited if the capacity is there. So we are in close synergy with information capacity. First of all, information capacity will increase, and secondly, we are helping to translate technical information from the government to communities using language that is easily understood. The medium can be anything. What is lacking in Indonesia is this, how to utilise the medium of technology or ICT for the public.

Because for those that already make use of ICT in Indonesian society, they prefer to use ICT technology for private benefits rather than public benefits. For example, data from the Ministry of Tourism and Creative Economy shows that e-commerce in Indonesia hasn't really developed, because we prefer to utilise social media for private interests. Facebook is narcissistic, Twitter is also the same. It's for chatting socially not for selling or participating in the economy. Economic interests aren't being pushed. It's not for the sake of political participation, and there is no economic participation.

In practice it's there, but it's still a small proportion. Now there are companies moving in that direction, for example PT Djarum bought blibli.com to promote their products. Because the Internet has penetrated only 40% of the Indonesian population, the use that I would like to see, as a decision-making tool by individuals on a personal level, is being achieved using existing mediums rather than new media. People in Porong have facebook but only use it only for meeting new people and chatting, not to discuss problems in their lives. As Castell said, how can a networked society be built just with ICT, because there are still many issues such as access and capacity.

DS : They think they have new technology but do not think about how to use it optimally.

AF : That's why we focus on the issue of capacity. We're shaping the community. We are injecting their capacity to produce and reproduce information. Capacity in co-production with information from government agencies. And capacity connects communities, from the highest level to those who are struggling. That is what we have facilitated, we have assisted to build the inter-group medium, but it's not being utilised.

DS : Maybe it's for the long term. After facilitation and initiation, continuity of community programs must be the next step.

AF : The government should be doing 2 types of equalisation, first equity in infrastructural capacity, and second, equity in information access capacity. In fact the government could if they wanted to, with the use of the Universal Service Obligation Fund (USO) for MPLIK (Sub-district Mobile Internet Service Providers) activities.

DS : If I'm not mistaken, the government is not contributing to supporting infrastructure, and is focused more towards private industry because the private sector's business interests are in infrastructure. The funds that the USO originally came from were private, in this case from PT TELKOM and INDOSAT, and were for their obligations in implement the activities of the USO. It said in the news that their contract will end in 2015, is that what will happen? I am pessimistic that the government will take over the role in the USO obligations.

AF : The government has already earned a great deal of profit from telecommunications businesses by selling frequencies and data usage in Indonesia. PLIK and MPLIK are also not working, as they are project-based.

DS : I've also been researching government programs and Kominfo: PLIK MPLIK by involving students. We want to know what the Kominfo initiative is in this program but it turns out there are a lot of big question marks. When we obtained a lot of data about areas in Banten, it was PLIK and MPLIK who received it. In fact it turns out that many of the PLIK and MPLIK projects don't really exist, there is only a banner or sign to say PLIK and MPLIK are here. Even one of our interview respondents did not understand that this was a continuing program, and could think of it only as a handout or a grant.

AF : One of the problems with Kominfo is that they are so focused on infrastructure. Kominfo have scrapped programs that build community institutional capacity. We are urging them to adopt the model that we are using as a process of institutional capacity building. Within Kominfo there are several directorates. For this issue we are working in partnership with the Director General of Public Information and Communications, Freddy Tulung. His response has been good. But getting it into policy, that is still a difficult challenge.

DS : And from the community, has the response been completely positive, have they helped?

AF : Yes, especially in Porong, in the region where there was the disaster, because it suited their needs. But in normal regions, we are still a little hesitant. We had an assumption that marginal groups would be easier than normal groups because of their needs, they know the benefits and the benefits are tangible. Our assumption was right hey Taba, that information groups would be more sustainable in marginal groups than in normal groups?

Taba : Thus far our hypotheses has been right.

DS : But the hypothesis still needs to be proven.

AF : To know the benefits of information, consider for example that information is like the oxygen we need to breath, so we will always need information.

DS : Maybe they still don't think that way, it hasn't captured their imagination.

AF : Or as Tantri would say, their 'code'.

Taba : We believe that if society is not yet capable, it's because the community has a different radar.

Tantri : Society has a different code in understanding technology and progress. So it's not a question of which society is more advanced and which ones aren't.

Taba : The mistake is to think that those who don't understand ICT are pro-progress.

AF : That is why we always focus on the benefit of information and not on the medium. Because when we're communicating we are educating about how to take advantage of the medium.

Taba : In the communities that we assist, they have differing patterns of information dissemination.

AF : We have ended our project in Wonosobo.

Taba : In Lumajang, they prefer to use forums and notice boards. The newsletters are still in circulation but there is a low level of readership. When they have a gathering they can chat and tell stories together, you know? Reading is a personal practice, you know?

DS : Like in Semarang, in front of the Suara Merdeka newspaper offices there is a copy of the newspaper mounted inside a glass board so that people gather to read and discuss the news with each other.

Taba : Yes, exactly. People who gather then talk about what's happening, there's a discussion.

DS : I've been very lucky to get so much information. According to my schedule I'll be conducting fieldwork in March.

Tantri : The issue of connection is very important, I really think it's influential. So true. Like in Japan where Internet penetration is 4 x higher than in Indonesia. It will greatly affect our daily activities.

Taba : But what about in Sabah and Serawak in Malaysia, is there fast connection there as well?

DS : The question of connection is a technical problem which I believe we will overcome in Indonesia although I don't know when. But the problems of skills and the cultural divide is more important in my opinion. Likewise with infrastructure, it's a technical problem which we overcame, we are now in-tune with the latest technology. We can already make use of technology and the information it brings with it better.

AF : Actually in Indonesia we have the technology, Internet penetration is 40%, only nothing has really happened.

Tantri : According to Nugroho's dissertation, the situation in Indonesia isn't complicated, even NGOs in Indonesia in 2009 just relied on email and mailing lists. Simple applications that don't need a large Internet connection capacity have already produced positive movements for positive change. Whereas now there are more complex applications like facebook and Instagram, but the movements for change aren't there.

DS : Because if you've already moved geographical location as a shortcut, or you've moved house to get access to the best information there could possibly be, how can the problem of skills and the cultural divide we were talking about earlier, in particular where utilising information can't be guaranteed to improve, be overcome?

Tantri : If we apply this Indonesia we can't overcome the problem if we just think about skills and cultural aspects, we should think about all aspects including technical and infrastructural aspects. In western countries, where there are cities and the tools are already available and the system is made so we can search for information, debate is more about the value of the information, if it's true or not, valid or not. Whereas in Indonesia, we don't have any of this hehe. The equipment is there but there is no signal, the information is there but it's not valued either.

For instance in London, information is available anywhere, as provided by the government. For example, the ticketing system for public transport forces the public to make use of information. In parliament, the debate is already on more 'adult' issues.

There is even a system to enable members of parliament to meet with their constituents. With these methods, through the system, I think it creates a more conducive atmosphere. But in Indonesia, if we want to connect it can't be through half-measures.

If we look at OGP, their focus is on the medium, because Indonesia is categorised as a Third World country, developed countries are categorised as First World countries. So developed countries are imposing their programs on the Third World. And Third World countries are forced to implement their programs by approaching conditions in developed countries. Donor programs from western countries have yet to recognise the psychographics of the community, particularly in rural areas. The medium is not available, and the programs are even Jakarta based.

AF : Because the system in Indonesia is different, the culture is different, like the experience in Jakarta International Airport where announcements or information are available but the public prefers the information to be read out and announced over the PA system. In our society, the habit of searching out information is rare. The culture is different from developed countries.

Taba : So hearing something is more convincing than reading it.

AF : If that's the case, why not move from that point, now what is needed is how people can utilise information not how people can utilise the medium. The question of what the medium is, that's for society to decide. Nowadays smartphones are ubiquitous but what people want to use them for is up to them. I am still comfortable with having social gatherings and residents association meetings in my home every Saturday night, for example.

For example, I ran focus discussion groups in Ambon so they could get to know the OGP. The response of one the women's communities there was: Oh, I only just found out that the Ambon City Government was so advanced and had website, but don't confuse us with access problems, it's enough for us just to use our usual way. I asked, what is your usual way? Using a mobile information van. Because they (OGP) will have an advanced program in Ambon to build a web-based community at the village level. And what's crazier still, is that people in Ambon who can meet face-to-face are being told to use the web.

Tantri : From face-to-face to being told to use that medium? It's forcing them really.

AF : Actually if you listened to the input from the focus groups, they wanted to increase the number of mobile information vans. How could they decrease the number? Secondly, the character of Indonesian society is that people are happier about the existence of government publications if they are distributed proactively without the community having to ask. If society is told to ask for it, how's that going to work? This is related to global ICT policies now like open data, which is interpreted in Indonesia as the presence of a website. ICT has not been interpreted as changes to the

culture of bureaucracy, proactive disclosure, or opening information channels proactively.

The Keluarga Berencana (Family Planning) program used to be great, information came to the village using mobile information vans. In Ambon it is even now still a part of the collective consciousness. I remember it from when I was little. There were films followed by explanation/clarification.

So in fact information channels which allow the government to get closer to the community do not create gaps, as opposed to a medium which creates a gap in society such as the web.

DS : Because in time, once the community understands the need for information and becomes familiar with new mediums there will no longer be problems, it will be easier to adopt and adapt.

AF : Yes, because thus far we haven't been accustomed to using information via ICT. So far, development has only followed only the interests of the market, it hasn't been socially engineered by the government.

On a global scale, there has been a blossoming in the non-English Internet. The Internet is currently mostly US based. In other sectors there has been growth in the Internet in accordance with the context in which the Internet is being applied.

The pitfalls of Internet for Community are still there, but not so for society's capacity to write down its experiences on the web. Like the case of migrant workers, their ability to write improved rather than the continuity of capacity within the community. The hypothesis is that the community will be sustainable if it can produce and reproduce information itself. In Porong the strongest thing was the community, not the production of information. In Kebumen they are at the information production stage, but the gap between individuals is so wide that the community's existence is threatened. That participant [we talked about] could go anywhere, but he had left his community behind. He travelled around the district to disseminate information about the NHI scheme, he became a midwifery advocate too.

Tantri : When people begin to appreciate the value of information, if they understand the problem, then the character for participating in evaluating that information will emerge.

AF : Yes, that's why we focus on communities.

DS : Culturally we are communal.

AF : Yes, that's true, so why not exploit what is already good, the communal approach. The evaluation will be about whether the community is sustainable or if it will disappear.

I, Sophie Revington, NAATI Accredited Translator No. 86572, hereby certify that this is a true and accurate translation, to the best of my knowledge and ability, from Indonesian into English of the document 'Interview 1'.

25 March 2016

Appendix 5 UU ITE

Electronic Information and Electronic Transactions Act

SECTION VII PROHIBITED ACTIONS

Article 27

- (1) Intentionally and without the right distributing and/or transmitting and/or making Electronic Information and/or Electronic Documents with indecent content accessible.
- (2) Intentionally and without the right distributing and/or transmitting and/or making Electronic Information and/or Electronic Documents with content on gambling available.
- (3) Intentionally and without the right distributing and/or transmitting and/or making offensive and/or defamatory Electronic Information and/or Electronic Documents accessible.
- (4) Intentionally and without the right distributing and/or transmitting and/or making Electronic Information and/or Electronic Documents containing extortions or threats accessible.

Article 28

- (1) Intentionally and without the right disseminating false and misleading information which results in consumer harm during Electronic Transactions.
- (2) Intentionally and without the right disseminating information intended to incite hatred or hostility towards an individual and/or specific groups of people based on their tribal, religious, racial, and intergroup identity.

Article 29

Intentionally and without the right transmitting Electronic Information and/or Electronic Documents containing personally addressed threats of violence or intimidation.

Article 30

- (1) Intentionally and without the right unlawfully accessing Computers and/or Electronic Systems that belong to others by any means.

- (2) Intentionally and without the right unlawfully accessing Computers and/or Electronic Systems by any means with the intent to obtain Electronic Information and/or Electronic Documents.
- (3) Intentionally and without the right unlawfully accessing Computers and/or Electronic Systems by any means by breaking through, breaching, bypassing, or infiltrating the security system.

Article 31

- (1) Intentionally and without the right unlawfully intercepting or tapping Electronic Information and/or Electronic Documents from a Computer and/or specific Electronic System belonging to another party.
- (2) Intentionally and without the right unlawfully intercepting the transmission of Electronic Information and/or Electronic Documents not intended for public use, from, to, and within a Computer and/or specific Electronic System belonging to another party, regardless of whether this causes changes to, omissions in, and/or deletion of the Electronic Information and/or Electronic Documents being transmitted.
- (3) Aside from interception as intended in paragraph (1) and paragraph (2) above, interception may be carried out within the framework of law enforcement at the request of police, prosecution, and/or other law enforcement institutions as defined under the law.
- (4) Further provisions regarding the procedures for interception as intended in paragraph (3) are regulated in accordance with government regulations.

Article 32

- (1) Intentionally and without the right unlawfully altering, adding, removing, transmitting, damaging, losing, moving, or hiding Electronic Information and/or Electronic Documents belonging another party or the public by any means.
- (2) Intentionally and without the right unlawfully moving or transferring Electronic Information and/or Electronic Documents to an Electronic System of an unauthorised person by any means.
- (3) The actions referred to in paragraph (1) resulting in confidential Electronic Information and/or Electronic Documents becoming publicly accessible and threatening the integrity of the data.

Article 33

Intentionally and without the right or unlawfully engaging in any kind of activity which may result in disruption to Electronic Systems and/or cause Electronic Systems to malfunction.

Article 34

- (1) Intentionally and without the right or unlawfully producing, selling, trading, using, importing, distributing, providing or possessing:
 - a) Computer hardware or software specifically designed or developed to facilitate acts as referred to in Article 27 to Article 33;
 - b) Computer passwords, access codes or similar that are intended to allow access to Electronic Systems for the purpose of facilitating acts as referred to in Articles 27 to 33.
- (2) An act as referred to in paragraph (1) is not a criminal offence if its purpose is to lawfully conduct research, to test an Electronic System, or to protect the Electronic System itself.

Article 35

Intentionally and without the right or unlawfully manipulating, creating, changing, deleting or destroying Electronic Information and/or Electronic Documents with the intent to create the appearance of authentic data.

SECTION XI CRIMINAL PROVISIONS

Article 45

- (1) Persons convicted of criminal actions as intended in Article 27 paragraphs (1), (2), (3) or (4) shall be imprisoned for a maximum of 6 (six) years and/or be fined a maximum of IDR 1,000,000,000 (one billion Indonesian Rupiah).
- (2) Persons convicted of criminal actions as intended in Article 28 paragraphs (1) or (2) shall be imprisoned for a maximum of 6 (six) years and/or be fined a maximum of IDR 1,000,000,000 (one billion Indonesian Rupiah).
- (3) Persons convicted of criminal actions as intended in Article 29 shall be imprisoned for a maximum of 12 (twelve) years and/or be fined a maximum of IDR 2,000,000,000 (two billion Indonesian Rupiah).

SECTION XII TRANSITIONAL PROVISIONS

Article 53

At the time of the enactment of this Act, all Legislation and institutional regulations regarding Information Technology that are not contrary to this Act are declared to remain valid.

SECTION XIII CLOSING PROVISIONS

Article 54

- (1) This Act shall take effect on the date of enactment.
- (2) Government Regulations shall be stipulated no later than 2 (two) years from the date of enactment of this Act.
- (3) For the public record, this Act shall be published in the State Gazette of the Republic of Indonesia.

I, Sophie Revington, NAATI Accredited Translator No. 86572, hereby certify that this is a true and accurate translation, to the best of my knowledge and ability, from Indonesian into English of the document 'UU ITE'.

18 March 2016